

STATE OF CALIFORNIA

MEETING OF THE  
CALIFORNIA INSPECTION & MAINTENANCE REVIEW COMMITTEE

Webcast

Tuesday, November 23, 2004  
California Air Resources Board  
1001 I Street, Second Floor  
Central Valley Auditorium  
Sacramento, California

**MEMBERS PRESENT:**

VICTOR WEISSER, CHAIR  
PAUL ARNEY  
TYRONE BUCKLEY  
DENNIS DeCOTA  
JOHN HISSERICH  
BRUCE HOTCHKISS  
GIDEON KRACOV  
JUDITH LAMARE  
ROBERT PEARMAN  
JEFFREY WILLIAMS

**ALSO PRESENT:**

ROCKY CARLISLE, Executive Officer  
LYNN FORSYTH, Administrative Staff

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## P R O C E E D I N G S

CHAIR WEISSER: Okay, with that I'd like to bring the meeting to order. My name is Vic Weisser, I'm the chair of this Inspection and Maintenance Review Committee and we're going to be having our November 23rd meeting, spend a lot of time in reviewing the draft report. As you know, State law precludes Committee members from getting together in groups larger than two, so we intend to be using this meeting as kind of the vehicle for us to as a group get our heads together and go through the report page by page, line by line, and we will slog our way through so that at the end of the time today we will have hopefully something that consensus can be reached around regarding submitting the report for review to other agencies and then ultimately to the Legislature and the Governor's office.

I'd like to start the meeting off by asking the members of the Committee to introduce themselves to you, and we'll start from our far right. And that is not a political statement. Bruce.

MEMBER HOTCHKISS: I'm Bruce Hotchkiss.

MEMBER BUCKLEY: Tyrone Buckley.

MEMBER KRACOV: Gideon Kracov.

MEMBER HISSERICH: John Hisserich.

MEMBER WILLIAMS: Jeffrey Williams.

CHAIR WEISSER: Vic Weisser.

MEMBER DECOTA: Dennis DeCota.

MEMBER LAMARE: Jude Lamare.

MEMBER ARNEY: Paul Arney.

CHAIR WEISSER: Very good. And I understand Bob Pearman's plane has just landed, he'll be joining us forthwith.

— oOo —

On our agenda, Rocky requires us, I believe, first to — if I can find the agenda — approve the minutes from the last meeting. As you know, we have summary minutes which merely identify the subjects that we talk about plus motions and whatnot. Any detail that people are interested in pursuing can be found through the fabulous transcript that's prepared with the assistance of Lynn and our wonderful transcriber, who once again asks us to attempt to speak directly into the microphones in a clear voice, and that's not just for the Committee members but also for the audience.

Once again, I think this is being webcast; is that not correct, Rocky? Is there any mechanism where folks on the webcast might be able to contact us with questions or issues?

MR. CARLISLE: Yes, either by email or they can telephone the teleconference number.

CHAIR WEISSER: And Rocky, could you read that email address?

MR. CARLISLE: The email is rocky\_carlisle@dca.ca.gov. The toll-free telephone number to join the conference call is 1-888-829-8669. When the operator comes on you have to give them the password, which is 59040.

CHAIR WEISSER: Could you repeat that again slowly, Rocky?

MR. CARLISLE: Yes. The telephone number is 1-888-829-8669. When the operator comes on you have to give them the password, which is 59040, and you have to give them the leader's name, which is my name, Rocky Carlisle.

CHAIR WEISSER: Very good. And with that, I'll ask if everyone has had an opportunity to review the minutes I previously mentioned for the meeting of October 26th and if there are any comments or changes that are suggested. Hearing none, is there a motion for adoption of the minutes for the October 26th meeting? And the motion is made by Mr. Hisserich, second by Jeffrey Williams. All in favor of adopting that motion please signify by saying aye.

IN UNISON: Aye.

CHAIR WEISSER: Any opposed? Hearing none, the minutes are approved.

— oOo —

Mr. Carlisle, you've been a busy man in the last month. Why don't you give us a run-down of the things that you've been involved with?

MR. CARLISLE: Busy yes, but few items. To be honest with you, there's been two activities I've been involved with. One is getting the draft of the IMRC report completed and out to the Committee members. That was sent out Sunday afternoon, and hopefully everybody's had an opportunity to read it.

The other topic I've been dealing with is the subject of a move for the IMRC office. We were notified by the Consumer Information Center that they needed the office that I currently occupy, and so we've arranged to take an office here at the Cal/EPA building effective December 3rd, so we will be moving. Addresses will change but telephone numbers remain the same.

CHAIR WEISSER: Very good. Are there any questions of Rocky from any of the Committee members? Okay.

— oOo —

Our fourth item on the agenda is an update from the Bureau of Automotive Repair on the Consumer Assistance Program. And if I could remind folks, if possible, to speak directly into the microphone, that would be very helpful and appreciated by the transcriber.

MR. GOLDSTONE: Good morning, Mr. Chair and Committee members. I'm James Goldstone, Deputy Chief at the Bureau of Automotive Repair. The Vehicle Retirement Program is going well. We have over a thousand applications so far and we've been crushing cars, retiring cars. It's working.

We, at this point, as you know, have not promoted the program heavily, but starting just a week or two ago, at the bottom of the vehicle inspection report that motorists get if their car fails, there's a statement on the bottom that now directs them to the program.

Also, we are targeting 1986 and '87 vehicles that fail within the past 30 days and sending them a letter directly telling them about the program, so participation will gradually increase as that happens.

Vehicle repair is going well. We have close to 600 CAP stations that are participating. We will have no problem meeting our budget goals for either of those programs.

CHAIR WEISSER: Jim, could you give us a sense of how much money you project going into the Consumer Assistance Program this year for assistance in making repairs to vehicles?

MR. GOLDSTENE: We're budgeted for \$12.5 million and I know we will expend that for repairs.

CHAIR WEISSER: Are you suggesting that the program is under-funded and in fact if additional funds were available you'd be able to assist more low income consumers?

MR. GOLDSTENE: I'm not suggesting that there are not enough funds available, but we currently are able to expend the amount budgeted for that program.

CHAIR WEISSER: Well, let me ask the question in a different way. If you had additional monies would there be additional consumers who could benefit from this program?

MR. GOLDSTENE: We haven't studied demand, but the likelihood is great that there would be additional consumers who could benefit from the program.

CHAIR WEISSER: And regarding the scrappage program, Jim, you indicated a thousand inquiries or --



MR. GOLDSTENE: A thousand applications.

CHAIR WEISSER: Applications. And how many at 500 bucks a pop, how many cars are you budgeted to be able to scrap this year?

MR. GOLDSTENE: We have \$4.5 million budgeted for vehicle retirement for this fiscal year, and that should at \$500 a vehicle come to about 8,000 vehicles that would be retired.

CHAIR WEISSER: And the program is about a month and a half, two months old?

MR. GOLDSTENE: We started it September 1st.

CHAIR WEISSER: So you're really kind of progressing rather quickly in terms of getting a list of interested consumers at this incredibly low price, I would say, of 500 bucks.

MR. GOLDSTENE: Right. And these are people who have failed their Smog Check, meet all the requirements of the program.

CHAIR WEISSER: Do the requirements of the program include the car actually being driveable?

MR. GOLDSTENE: They have to drive the car to the dismantler, yes, it does. They also have to have the car continuously registered in their name for the last two years.

CHAIR WEISSER: Thank you. John?

MEMBER HISSERICH: Just a question. \$4.5 million at \$500 apiece, isn't that 9,000 or some of that is programmatic costs other than actual direct to the folks?

MR. GOLDSTENE: That's right.

MEMBER HISSERICH: In other words, this 4.5 million includes program administration?

MR. GOLDSTENE: That includes program administration costs, mostly relating to the fees that the dismantlers charge us.

CHAIR WEISSER: Jeffrey?

MEMBER WILLIAMS: I understood you have a pilot program for 1986 and '87 vehicles?

MR. GOLDSTENE: Well, it's not a pilot program, but we're doing something that we haven't done before, which is just to be proactive and send letters. Check the VID, I know you all know what that is, and take off vehicles that have failed their Smog Check in the last 30 days in that year bracket because that seems to be a good rich target market, and send letters to consumers saying there is this program, come on in. And we'll see how that goes. Those haven't gone out yet and we might be able to report back in the next month or two about the success of that.

CHAIR WEISSER: Mr. DeCota.

MEMBER DECOTA: Yes, Mr. Goldstene, on the \$4.5 million that's budgeted for retirement of vehicles, what is the other \$8 million used for of the 12.5?

MR. GOLDSTENE: No, the 12.5 is just for vehicle repair and the 4.5 is just for vehicle retirement.

MEMBER DECOTA: Thank you. That helped me.

MR. GOLDSTENE: Okay. Sorry for the confusion.

CHAIR WEISSER: Yes, please, Tyrone.

MEMBER BUCKLEY: Thank you. You mentioned two improvements to the outreach program at the beginning of your talk. Can you repeat those, please?

MR. GOLDSTENE: The first one is, every time you have a vehicle Smog Checked, a vehicle inspection report is printed showing what the pass or fail of the vehicle is. At the bottom of the vehicle inspection report where the vehicle fails will automatically print out now a statement directing consumers, if they're interested, to the Vehicle Retirement Program.

MEMBER BUCKLEY: Not the CAP program in general, though?

MR. GOLDSTENE: It's specific to the Vehicle Retirement Program. It also mentions CAP. I don't have the exact text with me, but they'll call us and we'll be able to help them.

The other thing is the targeted letters to consumers whose vehicles fail who own 1986 and 1987 model year vehicles, we'll send them a letter if they failed within the last 30 days letting them know about the program. And we'll see how that goes.

CHAIR WEISSER: Have you or the good folks at the Air Resources Board done an estimate or are preparing to do an estimate on the emission reductions you hope to garner from these vehicles that are being scrapped?

MR. GOLDSTENE: We have actual data from the program since it began, both for vehicle retirement and vehicle repair, and based on that data we can extrapolate and sort of make estimates about what this fiscal year's reductions will be. I don't have them with me, but we could get them.

CHAIR WEISSER: We'd be interested, I'd be interested in getting a sense of that and a sense of the relative cost effectiveness of it.

MR. GOLDSTENE: Okay, we could give you that. It would be just an estimate, but we could give you what we have.

CHAIR WEISSER: Okay. Are any of these emission reductions that are being garnered being given to large businesses as some sort of tax credit or emission credit scam?

MR. GOLDSTENE: This is a very interesting question, Mr. Chair. The way the CAP emission reductions are calculated, it has been a subject of debate between our Bureau and the Air Resources Board and that's a continuing debate, but I think the direct answer is no. We provide estimates and calculations, but I don't know exactly how they're used relative to SIP calculations. I do know, though, that they are not captured for trading on an air pollution market.

CHAIR WEISSER: So the beneficiaries of these emission reductions are essentially people who breathe.

MR. GOLDSTENE: The State of California, the people of the State of California.

CHAIR WEISSER: Thank you. Any further questions? We'll take some comments from the audience. I think you might want to hang around.

MR. GOLDSTENE: Okay.

CHAIR WEISSER: Len. Please identify yourself before you begin speaking. And we'll keep to our process of allowing three minutes before the cattle prod comes out, Len, and stimulates your departure.

MR. TRIMLETT: Well, first question, let me rephrase the question. The credits that come from crushing these cars, is it being used as a SIP credit?

Secondly, what part of the state is this applicable to the letter; does it come out right off the smog report or does it come out sometime after that? The letter to the consumer telling them they can scrap their car for \$500. And what part of the state is this scrappage program in, statewide? Is it part of the SIP credit and is it an immediate letter that comes out on the report?

CHAIR WEISSER: Thanks, Len. I'm going to suggest that speakers from the audience use that podium, the public, so that you can get a good glance at the timing light.

MR. GOLDSTENE: It's a statewide program. Both vehicle retirement and vehicle repair are represented very well throughout the state in terms of accessibility to consumers. It is my understanding that the reductions are calculated into the

overall SIP reductions. I don't know how, but that they are included.

CHAIR WEISSER: I have a question in that regard. How could they be calculated into the SIP, which was adopted in 2003, if it's a program that's just come back to life?

MR. GOLDSTONE: Well, because it did exist in - I'd have to check to get the most accurate answer to that.

CHAIR WEISSER: And fortunately we have someone from the Air Resources Board who's going to be able to clarify that. Please identify yourself.

MS. MORROW: Sylvia Morrow with the Air Resources Board. Currently, the scrappage program is not included in the statewide strategy, those are possibly extra reductions since we can never guarantee, you know, on the funding and such.

And also, there are basically two scrappage programs. There's the Bureau's scrappage program for vehicles that fail, and then there is the broader scrappage program for vehicles that pass that the districts operate, and I'm not sure, you know, different districts may possibly include it as their element in their individual SIP's and they may have different ways of how they take credit for it.

CHAIR WEISSER: Thank you. James, I think there was also a question from Len regarding when the owner of the vehicle is notified of the availability of the program, is it immediately upon failing or is in a follow-up letter?

MR. GOLDSTENE: It'll be a follow-up letter.

Immediately upon failing they will get the notice on the bottom of their VIR, but we'll do a follow-up letter.

CHAIR WEISSER: Thank you.

MR. GOLDSTENE: You're welcome.

CHAIR WEISSER: Chris.

MR. ERVINE: Chris Ervine with Coalition of State Test-and-Repair Stations. The CAP program has been expanded by BAR and they're now using it through remote sensing, and vehicles that are failing in the remote sensing program are being directed to CAP stations. The information that we got is that through that they are also paying for missing, modified and disconnected items under the CAP program. How is this going to affect the total program as it was previous to this?

CHAIR WEISSER: Yes, I think that we received a notice from the Bureau that associated with the demonstration of remote sensing, that they were directing certain cars to CAP stations for repairs, but James?

MR. GOLDSTENE: That's right, and we're using that to validate the success of the Smog Check Program and also being able to validate the quality of the CAP repairs.

MR. ERVINE: My concern is that we're dealing now with missing, modified and disconnected items and the CAP program is paying for that.

CHAIR WEISSER: Is that true, James, that cars that have been illegally modified are now -

MR. AMLIN: David Amlin, Bureau of Automotive Repair. For the remote sensing pilot we wanted to go ahead and quantify all the emission reductions that we would get from these vehicles since we're calling them off-cycle and that they're not under the standard requirement to go ahead and repair the problems with their vehicles, we wanted to go ahead and look at the emission reductions we would achieve, and so the purpose of doing that is to go ahead and get all of the emission reductions.

Again, if they were up for the regular biennial you'd say you have to comply and you can't get re-registered until you get a certificate, meaning you're on the hook to go ahead and solve those problems yourself. In this case, we're going to go ahead and get all the issues fixed because we're trying to quantify the total emission reductions from an off-cycle program. It's a programmatic issue later that we'd go ahead and require people to go ahead and cover the cost of the additional repairs for tampered emission control systems and so on, but right now we're just trying to quantify the emission reductions so we need to look at complete repairs.

CHAIR WEISSER: Okay. Dennis?

MEMBER DECOTA: Dave, with regards to the missing/modified and the amount of being able to quantify the emission reductions, are you then able to assign those emission reductions as it relates to the SIP? Would you be able to, is my question?



MR. AMLIN: Yes. For the most part what we're looking at on a pilot project like this we're talking about, we'll send out notices to probably a few thousand people will probably get a few hundred vehicles repaired. It may not add up to a whole lot out of the approximately million and a half vehicles that fail a year, and so if we get an additional thousand -

MEMBER DECOTA: But we could use those numbers to help extrapolate a possibility of what that program is returning as far as emission reductions, right?

MR. AMLIN: That's correct. That's the purpose of doing this and collecting that data, so we'd say from this group if we saw this kind of emission reduction off a hundred cars, then we could go ahead and say what we'd get out of it if we did ten thousand cars or a hundred thousand cars and so on.

MEMBER DECOTA: Thank you.

CHAIR WEISSER: I guess the results would go into the formulation of a new SIP per se. I don't think they modify the existing SIP, this just kind of helps you achieve the attainment demonstrations which are done through actual monitoring stations.

MR. AMLIN: SIP is done at different times for, I think like the representative here from Air Resources Board stated, there's a statewide SIP and there's regional SIP's and they're done at different times in different regions, they're due at different times, and they take the information that's available at the time that they make that submittal and what

they're going to go ahead and count on and include that in there, so at the time if there's a commitment on the state's behalf to go ahead and have a new program, then they go ahead and include it in their SIP and include that as part of their projection and typically use our estimates or Air Resources Board's estimates for the reductions that would be achieved by that type of a program.

CHAIR WEISSER: Thank you.

MEMBER DECOTA: It is the intent, though, of BAR to accumulate this information and data for the next go-round in the SIP, I take it? In other words, if we can get quantifiable emission reductions in areas that we cannot track today, we all win.

MR. AMLIN: Correct.

CHAIR WEISSER: So the answer to the question is yes, is it not?

MR. AMLIN: Yes.

CHAIR WEISSER: Thank you. Any further comments from the audience? Okay. I appreciate the presentations and the information. This is an issue that the Committee is obviously very interested in, so you can expect us to be wanting regular updates on the progress, and particularly we're interested in early identification of any problems so that we can work along with you and the leadership of ARB and BAR to identify solutions to problems that might arise.

Just for the record, I noticed five minutes ago Mr. Pearman has joined us. Glad you had a safe flight up.

— oOo —

And now we will move to a special presentation on program avoidance, and this is a presentation that will be given to us by Robert Morgester who is a Deputy Attorney General who's been kind of working on this issue for years, and we became aware of the issue and we're very much interested in getting some background and some insights as to what's going on here.

MR. MORGESTER: Thank you very much. Again, my name is Robert Morgester, I'm a Deputy Attorney General with the State of California and I'm assigned to the Special Crimes Division. I'm going to give you an overview of what our investigation has uncovered.

Mind you, this goes back to approximately three years ago. The folks that are truly responsible for uncovering this particular problem is the Yolo County District Attorney's Office. I'm extremely grateful for their assistance and the assistance of Yolo County Investigator Bruce Melbock (phonetic).

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Basically, the problem was uncovered due to a peace officer by the name of Brown. Brown bought a kit car, a replica Cobra. Technically, that should be registered as a specially constructed vehicle and smogged as the year it was created.

Well, unfortunately, what we learned is that nobody does this. What Brown did instead is that he used an out-of-

state title service, and the way these services work is you will sell your car via a paper transaction to somebody – in this particular case, Alabama – they buy your car from you. Now mind you, no money ever changes hands, it's just a paper transaction.

Once they purchase your car from you, they will walk into Alabama DMV, they will register the car as what you said it was. In this particular case Brown said, 'My car is a '65 Ford valued at \$13,500.' That's registered in Alabama as a '65 Ford worth \$13,500. It's important to note the car never went to Alabama. Nobody's ever seen this car in Alabama. Nobody's ever inspected this car.

Now that it's registered in Alabama, our buyer in Alabama will reconvey the car back to the California resident. He now has title in Alabama for a '65 Ford worth \$13,500 bearing his VIN numbers. He will then take that information to the California DMV and he will proceed to register his car.

As part of the registration process there's only one thing required, a VIN verification. VIN verification, they walk out and say, 'Does the VIN on your title document match the VIN on your car?' Nobody looks at the value of the car. Nobody looks to see if, gee whiz, a '65 Ford that looks brand spanking new with zero miles on it. Is there a problem here? No. In fact, I'll be honest with you; the VIN verification program is a joke and needs to be scrapped.

Well, in this particular case Mr. Brown registered his car as a '65 Ford in California. The primary reason is at the

time that he registered his car there was no way for him to legally register his car in California with the engine that he had in it. It was specifically to avoid smog. In avoiding smog they get greedy. In this particular case he significantly understated the value of his vehicle and so he also defrauded the State of California out of registration fees. When you register a car in this process you're committing a variety of felonies. Number one, you're misrepresenting the year of the vehicle. Number two, the value of the vehicle. Each one of those is perjury, it's also fraud.

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What happened with Mr. Brown is that in the summer of 2001 as he was driving his car around he blew out his oil pump. He was quite distressed about this. He thought it was the manufacturer's fault. He went to the Yolo County District Attorney's Office to file a consumer fraud action.

When all the paperwork was put in front of Bruce Melbock, he looked at it and said, 'Dude, you got a problem here. You know, we have numerous felonies.' The case was referred to our office. Mr. Brown was prosecuted and Mr. Brown is no longer a peace officer. And in the end he ended up pleading to a misdemeanor of making false statements to a DMV. He had to pay a use tax, back fees and also serve 80 hours community service.

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Now, looking at Mr. Brown's case we recognized a larger issue, and that is these title services. This is Titles Unlimited. This is the one that registered Mr. Brown's car. I'm aware of over eight other title services like this.

I am also aware from conversations with Department of Motor Vehicles offices in other states that other state DMVs have become title services. For example, the State of Maine. We have people from the State of California that are registering their vehicles through Maine Department of Motor Vehicles. Again, there's no requirement for the vehicle to be inspected in Maine. We have folks in California that are washing their titles.

So let's talk about Titles Unlimited.

[new slide]

Titles Unlimited basically will register anything in Alabama for you. My running joke is I could register my dog.

[new slide]

This is your fee that you will pay. And again, what you do is you sell your car to them, they register it, they sell the car back. But again, the only fee that you pay is that which is listed.

[new slide]

For fun here I want to draw your attention with reference to what they require you to list the price as. "Price is the same price as you wish to have on your papers back to you. Since in some states you may be required to pay sales tax

on this price, be careful not to make it too high or too low."

Do we have fraud going on here?

[new slide]

And then of course the most important thing is, whatever you do, don't bring in our paperwork, just bring in the title that you received from us.

CHAIR WEISSER: (Inaudible) it says "Completely legal."

[new slide]

MR. MORGESTER: Yeah. Oh, yeah. Actually, Mr. Weaver, who runs Titles Unlimited, was convicted in California of vehicle registration fraud, and he's currently serving a year.

Now notice that he has processed thousands of automobiles in the past 28 years. They've actually been in business since 1977, I believe, so this has been going on for some time.

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Now, what we did in this particular investigation is, because our manpower was me and one investigator from Yolo County, to do this particular case we managed to get a search warrant out of Alabama. Using the resources of the Sacramento Valley High Tech Crime Task Force, we sent investigators back to Alabama and we grabbed Titles Unlimited's records. We then collated those records, we went through those records and we identified what I call low hanging fruit, and that is we by this

point knew what a kit car Cobra was, you know, the Shelby look-alikes? We could recognize their VIN numbers because they kept on using a similar VIN number.

So, picking on those folks because they were easy to identify, we reached out and touched approximately 17 of them. We got search warrants served in Northern California, because it's close to me, and in doing so here's an idea of what we ran across.

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Mr. Rosenberg purchased his vehicle in 2001, around \$83,000. Of course, he titled it as a '65 Ford worth \$31,000.

[new slide]

Mr. Kong, again, we have a purchase in 2000. So these again are all specially constructed vehicles. There's the price, that's what it was titled as, and the DMV fees owed.

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Mr. Gordon, \$66,000. Again, the value that it was titled at and the fees owed.

[new slide]

These cars can be extremely expensive. Mr. Nissim's was \$110,000. The only reason we found out the true price on that particular vehicle is we started targeting the folks that were assembling these cars and pulling their records through search warrants. You can see he owes \$12,000 in fees.

[new slide]



Mr. Lau, beautiful car, Titanium body. He owes \$3,000 in fees.

I'll be honest with you. None of these cars can pass smog. I mean, the types of engines that they have, they're designed for two things. They call it curb appeal, they've got to look good and they've got to sound even better.

[new slide]

We created a list of the 17 folks that we touched with reference to the declared value, the true value, the fees that they owe, the whole nine yards, and basically with those 17 people they owed \$69,000 in back taxes and fees to the Department of Motor Vehicles. Now, mind you, that money is really at the county level. These are all funds that should go to the local counties.

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So, what we were able to glean out of this is that your average loss in fees and taxes to the State of California was approximately \$4,000 per vehicle. Now, mind you, we're only looking at the replica Cobras at this point. The records from 1999 through 2002, 150 of the 513 vehicles that were registered through Titles Unlimited out of California were these Cobra kit cars. We estimate that just with those Cobra kit cars the State of California lost over \$600,000 in fees had these cars been legally registered. Of course, the main purpose in registering these cars was for smog avoidance.

[new slide]

Now, additionally, there's a bigger problem, because as we looked at the other cars, why were they doing this? Well, what we found is we have Harley Davidson motorcycles being shipped off to Japan and China, except when you look at the Harley Davidson motorcycle, it ain't a '53 Harley, so they're committing fraud overseas.

We have 1932 Royal Royces being registered for one buck that are being resold at auction. Again, what are they trying to do? They're avoiding sales tax and other fees that are supposed to be paid to the State of California.

We have salvaged vehicles. They are washing the title of salvaged vehicles. I've got stolen cars. They're washing the title of stolen cars.

My favorite one is we had an insurance fraud case where the car didn't even exist. They titled it through the State of Alabama through this particular process, then they said, oh gee whiz, lookit, our car was stolen. Well, the car never even existed.

These title services basically open up the State of California to a variety of levels of fraud. And again, Titles Unlimited, in business since 1976.

[new slide]

Now, as we did the Titles Unlimited investigation, I personally spoke to over 200 individuals that had these Cobra kit cars, and to a person, once they were confronted they would say, yes, you are right, I did wrong, but darn it, what about

all those hot rods? You think we're bad? You should look at them. And we did. And what we found, the running joke is that there are more 1930 Fords in California than Henry Ford ever built worldwide, and they're right.

Looking at the hot rod industry, what we discovered is that there is a systemic problem with reference to registration fraud. Everybody does it. This is the way you do business. This is the way they've done business for the last 60 years. Talking to an individual he referred to it as a Texas title. Well, of course if you don't have title to a vehicle this is how you do it, this is how you get title.

But what we're finding now with the hot rod industry, if you watch shows like American Hot Rod, they're now building them, they're building them from the ground up. But once you build that car from ground up, again, how do you register it? Well, it should be registered as a specially constructed vehicle and it should be smogged the year that it's constructed.

Now, of course if you register it as a specially constructed vehicle, you can't build for resale. It has to be built for personal use or for the personal use of another individual.

The other problem with building it as a Smog Check vehicle is smog. These folks, you know, they want the big engines, they want the noise, they want the sound, and smog is something to get around, and the easiest way to get around it is

we don't call them specially constructed vehicles, we call them 1935 Fords.

You may be aware that we have served search warrants on Boyd Coddington (phonetic). Now, I'm not speaking out of school here. The search warrant is a public document and the search warrant basically states that Boyd Coddington registered three vehicles using fraudulent documents obtained from out-of-state title services.

His, quote, 'Boydster,' which is a car built from ground up, beautiful automobile, were registered as '35 Fords valued at \$15,000. Now, these Boydsters in parts alone are probably around \$60,000, and they sell for about \$120,000.

I received an anonymous phone call – received a lot of anonymous phone calls on this issue – an individual out of Orange County, and following an article in the *Orange County Register*, his statement to me was the problem is even more widespread than you know. The number of 70,000 vehicles fraudulently registered in the State of California is low.

[new slide]

Now, using the number of 70,000 and using the number of approximately a \$4,000 loss per vehicle, we estimate the State of California has lost over a quarter of a billion dollars in tax revenue.

Now, this is an interesting argument here, because technically these cars should not even be registered, so if they

were registered legally and if they pass smog, then we have a loss.

[new slide]

The issue, of course, is how do we solve this problem? And I'll be honest with you. It is that I am deeply desirous of finding a solution to this, because otherwise I'm going to be stuck for the rest of my life doing this investigation and prosecuting these people. I have no desire to do that. This has been interesting, this has been educational, but there are other things that I can do with my time and energy.

With that being said, there is a solution out there and it's not that difficult.

Number one, all we have to do to shut down this type of fraud is institute inspection of any vehicle that bears out-of-state title.

Now, inspection is not a VIN verifier program; that doesn't work and that's a joke. What inspection would require is you bring your car in to a BAR CHP facility and they look at the car. And these folks have to have the training so they can say, nah, this is not a '35 Ford, this is not a '65 Ford, this is a replica. Who do you think you're fooling?

Having that type of inspection program will, one, stop this fraud dead in its tracks; and two, it will force these folks to go and register cars the correct way, thereby paying the appropriate fees that is due on this particular vehicle. I

believe that the capture of fees will more than pay of the program.

The second part of the problem is that we have an estimated 70,000 people in the State of California that have done wrong. Now, we can try to spend the resources and the time and the energy to track them down. And the beauty about this, it ain't that hard. We just have to go to the Good Guys, right? You know, all the cars are lined up there. I could show up there on a weekend, give me 15 officers and 200 tow trucks and I can enforce this quite easily and we can prosecute everybody involved.

I think – again, this is me speaking. I speak on nobody else but my behalf at this point. The approach that should be explored is an amnesty program, and what we do is we reach out to these folks and say, you messed up. We figure out what an appropriate fine would be. They pay the fine, we grant them amnesty, and all the amnesty will do is that they don't get prosecuted, but we place them back in the position that they were in when they first were supposed to register their car, and now they have to re-register their car correctly as what it is, which is a specially constructed vehicle, and the second thing that they'd be required to do is meet the smog requirements that are applicable to that particularly vehicle.

Now, my running joke again when I chat with these folks is a lot of them, because again of the systemic nature of

this problem, don't realize that it's not that hard to comply with the law. Most of them didn't even know what the law was.

For example, using the Cobra kit cars, I'd say about 20 percent of them were running pre-'74 engine blocks. It is my understanding if you're running a pre-'74 engine block and you're a specially constructed vehicle, you are smogged as a pre-'74 vehicle. These cars could have passed smog. They didn't realize it and they chose to commit fraud because that's the way everybody did business. So with reference to these 70,000 vehicles, there is a percentage of them that legally right now, had they gone through the process, could have and would have passed smog.

What I am hoping from this Committee is, one, obviously to make you aware of the issue, and then, two, down the road to explore with the Legislature how we can fix this so I don't have to spend the rest of my life prosecuting these cases.

CHAIR WEISSER: Well, thank you, Mr. Morgester, for the presentation. It might be helpful if we could, Lynn, to get peoples' names who might want a copy of the presentation, so sometime today just ask - give Lynn your name and address and we'll get a copy of the presentation from you and we'll be able to get that presentation in your hands.

This is an issue that is brand new for me and I assume many, if not most of the members of the Committee, and it certainly has some level of import in terms of both taxation and

emissions. Our interest, of course, is the emissions aspects of it, and it is something that at some future date I think we are going to want to look into a little bit deeper.

Are there particular questions that members of the Committee wish to ask? John?

MEMBER HISSERICH: If Mr. Weaver, I think was the name, has been prosecuted, but the company and similar companies are still operating, obviously.

MR. MORGESTER: Yes, they are.

MEMBER HISSERICH: Or presumably.

MR. MORGESTER: Yes, they are. Yeah, they're all out of state. We have a couple now that will sit there and say, 'We don't do business with California,' and that's one nice thing that's come out of it, but unfortunately, they are out there, they are still in business and they are still doing it.

CHAIR WEISSER: Other questions? Jeffrey.

MEMBER WILLIAMS: I'm a bit confused on a fundamental point, because I understood that when a car comes in from out of state it has to be smogged because there are a lot of records like that called initial inspections, so how were these cars able to avoid being smogged? Is it because it was a '65?

MR. MORGESTER: That is correct, because they're outside the inspection time period.

MEMBER WILLIAMS: So that's the -- it took two components. Not just that they used an out-of-state title, but they claimed it was (inaudible).



MR. MORGESTER: Right. And the only way, basically the only way to get the title was to go out of state to buy it from these title washing operations. And the unfortunate thing that we saw is that with just about everybody on the kit car issue and the hot rod issue, their intent in buying these titles was to avoid smog, but when they did it, greed took over. And we realized that 99 percent of them misstated the value of the car. Of my investigation, I found one person that actually claimed the correct value of their vehicle.

CHAIR WEISSER: I'm shocked at the venality of the American public, and I am shocked that the brothers and sisters of California and Alabama are not doing a better job. Perhaps you could summarize what your contacts with Alabama have resulted in in terms of them trying to clean up their swamp. And also summarize to us the discussions that you've had with our own Department of Motor Vehicles to find out what helpful things the DMV is proposing that we do to address this problem.

MR. MORGESTER: Well, let's talk about Alabama first. Alabama I'm extremely grateful to, especially their Office of the Attorney General. They have been very cooperative.

Alabama, once they realized this particular issue, made a requirement that the car must be physically located in Alabama.

CHAIR WEISSER: Shocking.

MR. MORGESTER: And that has stopped, obviously, title fraud theoretically in Alabama, but we found like Weaver, when

that occurred while we were investigating him, he then moved his getting the registration done through Maine or Florida or other states that have more wide open systems.

With reference to the DMV, my intent is not to burn down Rome here today. I have been working with DMV. It has been a unique process over the last three years, and I am hopeful that DMV will continue to work with me to solve this problem.

CHAIR WEISSER: The new director of DMV, Joan (inaudible), is a very sharp and capable person, and I would urge you to get in contact with her to spell out this problem. And if it would be helpful, I'd certainly be willing to accompany you. I need to more fully understand the dimensions of the issue, but it seems like an issue that ought to be addressed.

Bruce.

MEMBER HOTCHKISS: You mentioned a number of states or a couple. I know there are others that make it relatively easy. Wouldn't it be beneficial if we had some kind of federal standards?

MR. MORGESTER: Oh, absolutely.

MEMBER HOTCHKISS: Is there any push for this? I know, I think it was at an insurance - it was a senate insurance hearing or something they were talking about salvage titles and trying to get federal standards for that. It would seem that it

would make it a lot easier, because obviously there are some states that have virtually no standards for titling vehicles.

MR. MORGESTER: It would, but the problem that I've run into, and this is not knocking the federal system, but the federal system moves extremely slow and it's one that I'm a firm believer that we need to protect our own interests while we wait for the feds to catch up, and in protecting our own interests right now we need to have mandatory inspection of these vehicles coming in by folks that know what they're doing, and that right there will significantly reduce this type of fraud.

CHAIR WEISSER: I'd be interested in any comments from the public here, particularly any of the public who are involved in classic cars and to see if there are any ideas or suggestions or viewpoints they might want to share with us. Don't all come up rushing up to the front. Larry.

MR. ARMSTRONG: Yes, Mr. Chairman, thank you. My name is Larry Armstrong. I -

MALE VOICE: That mike's not on.

MR. ARMSTRONG: I think like most things there's usually a different side to stories and -

MEMBER WILLIAMS: I'm not sure that mike is working.

CHAIR WEISSER: It doesn't sound like it's on. I think we may need some technical assistance, and until then, Larry, why don't you move over to the other mike and I'll waive my hands in an odd fashion as the yellow light comes on.

MR. ARMSTRONG: Yes, my name again is Larry Armstrong. I think maybe like most things there's usually a different side to some stories. I, being a responsible citizen, went in one time to register a 1961 Volkswagen that I had purchased that was in pieces that I intended to get rebuilt. The Department of Motor Vehicles told me I had to have a Smog Check on the vehicle before I could register it. I told the lady that it wasn't running. I'd be happy to do that, just give me a registration that shows that the vehicle is not operating, and it was refused, so I went away with basically having nothing for my efforts.

And I'm suspecting most of the time, I remember one time somebody saying that all smuggling is based on avoidance of taxes, and I thought, boy, that's an interesting statement, because the true value of the thing is always there and the taxes are the thing that's negotiable.

I suspect that if there was a system that was set up so that someone could properly do a kit car and properly set it up so that it was able to comply with Smog Check Programs, most of the people that are buying those things are spending a lot of money for them so they're probably not either aware or enjoying the fact that they might be setting themselves up for a year in jail or something like that, so maybe we ought to go back to the beginning and look and see why this is caused so that people can't get the vehicles through the system and get them properly registered. Thank you.

CHAIR WEISSER: Thank you. Those are thoughtful remarks. We'll work our way back to front. Yes. I'm sorry.

MR. STERNS: My name is Bob Sterns, I'm the President of the Association of California Car Clubs, and of course we have a lot of classic and collector cars in our organization.

One thing that Mr. Morgester mentioned about this solution number two, the amnesty program with no prosecution and wanting to re-register the cars as specially constructed vehicles. Well, currently in California we're only allowed to have 500 a year, so we can only build 500 a year specially constructed vehicles, that's under Senate Bill 100. And the thing that how is he going to get 70,000 of those in? It's going to take a few years unless they increase that.

MEMBER HOTCHKISS: I don't believe that's true. There are 500 that come in under the exemption on that, and under that 500 the owner of the vehicle is allowed to have the vehicle registered and smogged either as to the year of what the vehicle looks like or the year of the engine. There is an unlimited number of specially constructed vehicles allowed, and the Smog Check Program says that if you bring your car in and it's a specially constructed vehicle, it's registered as the year of the vehicle and then it lists the year of the engine, if I'm not mistaken.

So if you have a ground-up 23T with a '61 Buick engine in it, it may be registered as a 2004 specially constructed

vehicle with a '61 engine in it, and it is exempt from smog. It's labeled by the referee.

I mean, I look at a lot of specially constructed vehicles and I would say probably very few of them have referee labels. Some of them do, so there are people that go through the trouble of doing it correctly.

CHAIR WEISSER: Thanks, Bruce.

MR. STERNS: My understanding is that if it resembles a certain year it can be registered as that certain year, not necessarily what engine it has in it or whatever.

CHAIR WEISSER: Bob, I'm really glad you came today. I think what you're bringing out is both the complexity of the issue, and it is complex, and the state of confusion that exists. Those are two aspects that joined with the venal nature of people as we've been shown can result in substantial problems.

MR. MORGESTER: If I could just have one comment.

CHAIR WEISSER: Mr. Morgester.

MR. MORGESTER: Of course, one of the challenges for me is I had to figure all this stuff out, and what the rule is, from my understanding, is that as long as you're building the car for yourself it's a specially constructed vehicle and we could register millions of those. The only issue is, once you have your specially constructed vehicle is you have to pass smog. Two ways to pass smog is either by the engine, and if you have an older engine that gets you in the older compliance

standards, or you can go through SB100, and SB100 I jokingly refer to as a Nascar exception, and that is, if you qualify under SB100 it doesn't matter what you're running, you are now smog exempt either based upon the engine type or the body that you're using. So for example, I could take a Nascar racer that resembles a '68 Ford and drive it legally in the State of California for smog purposes because of SB100.

CHAIR WEISSER: I want to thank you, Mr. Morgester. This is not really the time or place for us to try to go into depth on this issue, and I think what you've accomplished today is highlighting the issue to us, and it's something that as we try to identify what our agenda will be in the months to come we need to figure out if this is an issue that we're interested in pursuing.

I will still hold out to you, Mr. Morgester, my willingness to accompany you to chat with DMV Director Brulke if you think that might be of any assistance.

Bob, do you want to have a concluding remark?

MR. STERNS: Yes. Just that knowing the amount of the cars that are out there, vehicles, especially like you say, the Roadsters, '34 Ford, and it's understandable that if Henry Ford only built so many how come we got three or four times as many as was built.

Well, it's obvious if you go to the car shows, very, very few of those are steel bodied cars. And even now even the

'32 Fords and '34 Fords now are built as steel cars, even though they're new.

So this is a big challenge. I mean, there's going to be a pretty big deal in California.

CHAIR WEISSER: Well, we look forward to working with the car clubs in solving the problem.

MR. STERNS: Well, that's why I hope so, because we want to come up with a solution, too. You know, we're not here to fight the law. I mean, we want to obey the law but we also want to have an understanding that this is a big complex problem that's going to take a lot of talking about, not just the presentation by Mr. Morgester here, but we're willing to work to make it right. We're not criminals.

CHAIR WEISSER: I'm glad to hear the cooperative attitude —

MR. STERNS: Thank you.

CHAIR WEISSER: — and the can-do attitude from you as a representative of the car clubs. Perhaps with your help we'll be able to assist in the fashioning of a solution.

MR. STERNS: Thank you.

CHAIR WEISSER: Len?

MR. TRIMLETT: Len Trimlett, smogrfg.com. Like Bob, I've got also a big following out there that's run statewide from San Diego to Shasta and all points in between. I see cars regularly, whether it be the Good Guys, whether it be Reno car



show or Cherries Jubilee or wherever you want to go that fall into this same problem.

One thing that is an area for consideration on legislation is the area of the specially constructed vehicle, defining the specially constructed vehicle. Vehicle Code 5051 in particular is a gray area to me. I see it every day. And what I've indicated to Mr. Morgester is that as long as I have accurate information I can help him get out to the hot rodders up and down the state and to let them know about this problem, and that it is a potential thing where legislation would come in the form of amnesty, et cetera, et cetera, and figure out what is the proper course of action.

Defining the specially constructed vehicle, that could be anything from a fifties truck to a '34 hot rod. I see them all and I would be glad to use my resources to get that out to the people statewide to let them know, because they do read my website and I get everything from San Diego to Pismo Beach to San Francisco and all points in between talking to the car community. So yeah, it is a problem. Thank you.

CHAIR WEISSER: Thank you, Len. Are there any further comments from members of the audience? Mr. Addison.

MR. ADDISON: I'm not sure if this is on.

CHAIR WEISSER: It is now on.

MR. ADDISON: All right. Tom Addison with the Bay Area Air Quality Management District. Thanks for the opportunity to be here today and thanks to Mr. Morgester for

several years of a very interesting investigation and presenting that information to you.

One thought that the Bay Area Air District would have for the Committee as we listened to the presentation is I think it would be helpful to begin to quantify the public health aspects of what seems to be a significant problem. And there has been some quantification of financial losses to the State and they seem astonishingly large, a quarter of a billion dollars. And certainly we're not suggesting that those shouldn't be considered; we would just want to make sure that there's some consideration of the public health impacts and the magnitude of this problem from that perspective.

Then in our conversation with folks at some of the State agencies about this issue, it doesn't look like there's been a lot of quantification done, so that certainly seems something that might be of interest to this Committee. This Committee has some ability to work with State agencies on that side of the issue and we would urge that to happen.

CHAIR WEISSER: Thank you, Tom. Please.

MR. NOBRIGA: Larry Nobriga, Automotive Service Councils. This whole thing brings question to me. If we've got this many vehicles that are illegally registered to escape smog, how many vehicles are theoretically garaged in change of ownership areas that really live in enhanced areas? And the only reason to do that would be to escape smog. Does anybody have any numbers or any ideas along those lines?

CHAIR WEISSER: I can't answer the question, but knowing the good will of the public, Larry, and the willingness to abide by laws and rules and pay their fair share of taxes, I imagine it's a hell of a lot more than we'd like, than we desire.

Please, John.

MEMBER HISSERICH: One question for Mr. Morgester. As I went through some of the folks here on your list, there's clearly a pattern that there's some that are obviously doing this as, you know, recurrent and it's a business for them. I mean, I see names over and over again. In terms of dealing with it, did you approach it differently? I mean, one off person who does it, you know, that's a problem. But somebody who makes a career out of doing this presumably warrants more scrutiny.

MR. MORGESTER: With reference to the Attorney General's Office, this particular investigation I had one investigator, so my focus was on the individual that titled all of these cars. However, in doing that and becoming aware of these particular issues, we made this list available to a variety of folks, the Air Resources Board, CHP, DMV. One thing that we required from DMV, the title for all these vehicles be pulled. This list following a trial on this issue became a public document. I'm also aware that Channel 7 News out of San Francisco has examined this list and has been doing follow-up stories on a variety of folks, specifically targeting those

individuals that are shipping product overseas, and that will be airing tonight of all nights.

CHAIR WEISSER: This is Channel 7 in San Francisco?

MR. MORGESTER: Yes. So from there, there has been activity on our behalf to make sure that this information is placed in the hands of those individuals that have the resources and hopefully the desires to investigate further. But again, the numbers that you're talking about are so huge.

You know, with reference to the Cobras I will tell you that I personally sent out what I call prosecution packages to approximately 42 district attorneys offices outlining the crimes, identifying the individuals, giving them the information so at a local level they could make a determination what, if anything, they wanted to do to these particular individuals.

CHAIR WEISSER: I'm drawn toward Tom Addison's question and suggestion associated with, for this Committee's purposes, what are the improvement implications of these cars running around in California. I don't have a clue as to how you could conduct, you know, make such an estimate, considering the nature of the illegal registration, but that's something that if we look into this further I think needs to be part and parcel of what we look at, because I think it's through the public health side and the missed taxation side that you'll actually get interest, political interest in addressing the issue.

Well, I thank everyone from the comments and for you in particular, Mr. Morgester, for sharing with us your

viewpoints and perspectives on this. As we develop a 2005 work plan, now we have one more issue that will fall into our consideration as to what we should be addressing. Thank you.

MR. MORGESTER: I appreciate your time.

— oOo —

CHAIR WEISSER: Okay, folks, it's time to fasten your seatbelts for the beginning of what I hope will be a slow but comfortable ride through our agenda for the rest of the day, and what I'm referring to specifically is the need for this Committee to now discuss, review, edit and come to consensus on our report to the Legislature and the Administration.

Committee members, as Rocky mentioned, were sent a completed draft of the draft report, but only as of Sunday, but they had received earlier drafts along the way, so it's not as if they've only had a 48-hour period to review all of this, although I suspect as we go through this it might appear that way.

Rocky, is there an introduction or background statement at all that you'd like to make to the Committee before we weigh into our review and discussion?

MR. CARLISLE: Just kind of background on the way we've approached this. Originally, we had a number of topics at the beginning of this year, approximately fifteen of them, and as time went on it was pretty obvious we couldn't do a report on all of them, so most recently we pretty much adopted the idea of responding to the Smog Check report that was issued by the

Bureau of Automotive Repair and Air Resources Board in April of this year that had seven recommendations.

To that we've added two other items. We looked at the methodology of quantifying the emissions, which is in the first part of our report, and lastly we looked at BAR funding and budget issues.

CHAIR WEISSER: Very good. Are there any questions or comments from the Committee members before we dive in? My belief is our best bet is to try to march our way page by page through this report to identify those policy issues that need discussion and also substantial questions associated with the editing to ensure that the report is clear. At the end of our discussion I'm going to propose, and I won't do that just now but I'll give you a heads up, that you delegate the final editing to me and Rocky, because there always will be minor edits that are nonsubstantive that we will have to conduct prior to release of the report to the draft agencies, but we'll get to that at the very end of our meeting.

So my proposal to you, as I said, is for us to slog our way through this page by page to identify in particular any of the policy issues that are addressed in the report, to have a full and open discussion of those, to invite public discussion of our discussion, and then also to deal, hopefully quickly, with issues associated with more editorial in nature. Does that work for folks? Okay.

Has everyone had a chance, then, as we move into the introduction, to at least scan this? And I guess as backdrop, we changed this introduction rather substantially. Rather than having it be an introduction and frankly an executive summary, we eliminated the executive summary side because the report itself is rather short and we think folks are capable of reading, what, 25 pages, Rocky?

MR. CARLISLE: Twenty-nine.

CHAIR WEISSER: So, any questions or comments associated with anything on the first page of the introduction?

Hearing nothing, the second page, which describes the process that we went through, the establishment of our subcommittees, the agencies that we contacted and the scope of our study. It's pretty vanilla, I think. There's nothing particularly important here other than the specific identification of areas that we intend to report on but the report materials for one reason or another are not ready.

Those four areas which will not be addressed in this report include the comparison of test versus test-and-repair stations in terms of their performance on smog checks; second, the consumer information survey, that's going to take longer for us to complete; a discussion on program avoidance and recommendations to lessen the number of vehicles that are illegally avoiding Smog Check; and lastly, an assessment of vehicle preconditioning measures.

Any comments on any of this? John.

MEMBER HISSERICH: A question, if I may. You did this through ET Blast, you sent out the notice. Did we get any requests for copies of the draft report as a result of that?

MR. CARLISLE: No, I haven't sent that out yet.

MEMBER HISSERICH: Oh, okay. It will be going out?

MR. CARLISLE: It will be going out, assuming at the conclusion of this meeting that –

MEMBER HISSERICH: That the draft is adopted.

MR. CARLISLE: Yes.

MEMBER HISSERICH: Then it would be distributed at that juncture.

MR. CARLISLE: It would be distributed.

MEMBER HISSERICH: Okay. Thank you.

MR. CARLISLE: And it'll be available on the website. We didn't bring any copies today because it will require some edits, but it will be available on the website.

CHAIR WEISSER: Okay. Any other comments in terms of the report at this point?

Fine. Let's move on, then, to the second part of the report, which is basically the detailed report. Frankly, the first part of this which we identify as quantifying the emission reductions –

MEMBER LAMARE: Vic, I have a question about the introduction.

CHAIR WEISSER: Please, let's go back to the introduction.



MEMBER LAMARE: I know we don't want to do an expanded extended executive summary, but shouldn't we have our recommendations up front so people don't have to search for them? I guess the way the report is currently constructed, in order to know what we're recommending the reader will have to go to the back page; isn't that the thought?

CHAIR WEISSER: Right now the way it's constructed the reader would have to go to each of the subject matter areas to identify the specific recommendations for that subject matter area.

The problem that I think we run into by attempting to capture those recommendations and put them into an executive summary is that without the subject matter of that recommendation being included, it's going to be very confusing for a reader to figure out what the recommendations are about, and if you have the subject matter you kind of need a little bit of description of what the issue is the recommendations are trying to address; otherwise the reader will, I think, be confused. If you do that, you've got about a quarter of the report that you're just repeating.

We can try, but I can tell you that the initial attempt that was made, to me, was just a complete recitation of the report.

MEMBER LAMARE: Understood. It seems to me that if this report is going to the Legislature there has to be somewhere a key. The ARB/Bureau report has its recommendations

up front, we want these changes A,B,C,D,E,F,G. We at minimum ought to be saying IMRC supports or does not support the Bureau/ARB recommendations for A,B,C,D,E,F,G. It might be in a cover letter from the chair that's in front of the introduction, but I don't think we want the legislative staff to have to fish to find out what we're supporting or not supporting in the ARB/Bureau report for legislative changes.

CHAIR WEISSER: Rocky, you have any thoughts on that?

MR. CARLISLE: I did actually write up something similar to that. As you know, I started writing up an executive summary but it did get quite lengthy in trying to explain what the recommendations were really for.

MEMBER LAMARE: Well, maybe I should amend my request that we have at least a cover letter from the chairman saying the legislative changes that this report recommends are as follows and support or are in addition to legislative changes that are in the ARB/BAR report. In other words, not everything that's in the report but specifically addressing legislative changes that might be in the report.

CHAIR WEISSER: I think I'm struck by your fundamental issue, which is for some of the folks who are going to read this you've got to make it very easy for them to find what you're specifically recommending.

MEMBER LAMARE: What is relevant to their review.

CHAIR WEISSER: Yeah.

MEMBER LAMARE: Is this a report to the Legislature?

CHAIR WEISSER: It's a report to the Legislature and the Administration.

MEMBER LAMARE: Oh, I see.

CHAIR WEISSER: It serves two purposes. Therefore, I guess I'm going to suggest that we adopt your suggestion and try to figure out a way to summarize in this introduction, now we'll call it introduction and summary, the specific –

MEMBER LAMARE: Recommendations.

CHAIR WEISSER: Introduction and recommendations – some way to laundry list our specific recommendations.

Dennis?

MEMBER DECOTA: I agree with Jude on that issue. I think that it can be done very effectively if you summarize in the beginning of your executive report the total amount of emission reduction enhancements that if these recommendations were followed would generate on a daily basis, and then specifically go just by title into the areas of the recommendations.

I also believe that you need to put in there some type of syllabus or deal with every acronym that's used –

CHAIR WEISSER: Yes.

MEMBER DECOTA: – so that the readers that are staffers that don't always understand the lingo, and we need to really take and be careful in how that's done to make a readable report.

MR. CARLISLE: Just one point I'd like to make. I don't know that we can really quantify the corporate emission reductions as a result of these recommendations. Certainly, each individual recommendation has some calculations done by the ARB and BAR, but when you compile all of these recommendations together I don't know that you can do that.

MEMBER DECOTA: I don't know that you can do it either but I know that the whole program is an estimate. No, I'm serious. If we can take and tweak the program to be more proficient, why can't we estimate, you know, and then learn? I mean, we've got to get some quantifiable numbers in this program. It's time. It's time.

MR. CARLISLE: I agree. I'll check with ARB and BAR on that issue, see if we can calculate something based on these recommendations.

CHAIR WEISSER: I think that would be a very difficult challenge frankly, Rocky, but please check and report back.

I think we could do a very brief summary of recommendations for each of the items. We need an index, you know, a table of contents page, obviously, that will direct people to both the subject matter and various aspects of the subject matter so they don't have to leaf through.

I like the idea of a glossary of terms, and what we need is for someone unfamiliar with the program to read the report and let us know what terms they don't understand, and that will be the terms that need defining. And I nominate

either Rocky's wife or Lynn's husband to be that reader and just take up a red pen and circle the words they don't understand what it means.

In fact, Jude, I'm so taken by your suggestion to come up with an executive summary that I will name you to a subcommittee composed of you and me to come up with that summary tomorrow, okay? So we will come up with something.

And now a very wise member of the Committee has suggested that the Committee before we jump full into Part II take a 15-minute break. So if we could come back at --

(A brief recess was taken.)

CHAIR WEISSER: Okay, we will be back in order. I want to remark to the audience that I have asked that copies of this working draft be made so that you won't have to rely merely upon what's being broadcast before us, but you will have a hard copy in your hand as soon as possible.

I want to emphasize that this is a working draft and that utilizing it in its current state as the report of the Committee would be incorrect and improper, because it's going to go through changes. It'll go through changes today and it'll go through changes in the subsequent editing process. We'll try to get those to you as soon as possible.

Before the break we concluded a brief review of the introduction and we agreed that we were going to try to amend that by adding some form of brief explanation and listing of the recommendations that are put forward in the report. That might

take place in as simple a form as a listing of the title of the section and then listing the recommendations, or we might want to consider coming forward with a chart comparing and contrasting the ARB/BAR report recommendations and our recommendations, and we'll just have to see which works better.

Mr. DeCota?

MEMBER DECOTA: Just a point of clarification. Will this be our only public meeting with regards to the draft report before it's finalized?

CHAIR WEISSER: My intention, and I want Rocky to give me some help here, is that once we finalize this, assuming that the Committee concurs with my recommendation that any additional editing of the non-policy aspects of the report be delegated to me, then it would be our intention to send this report out to the agencies, and in particular the Bureau, the Department of Motor Vehicles, the CHP I think gets a shot at it, and of course the Air Resources Board and the public, and that the public and those agencies then will have, how many days, Rocky, to give us written comments?

MR. CARLISLE: Thirty days.

CHAIR WEISSER: Thirty day period for us to receive comments. We then will, I guess, batch those comments and attach them as the third part of the report, and then the report would go out. So the short answer to your question, Mr. DeCota, is yes. If that's a problem, we should raise that and discuss that towards the end of the meeting.

MEMBER DECOTA: Well, I think as you explained it, it's satisfactory.

CHAIR WEISSER: Thank you. Ms. Lamare?

MEMBER LAMARE: As you explained it, that really contrasted with what I thought we were doing, which was that the draft report would go out for comment and we would meet in January and hear comment and adopt a final report to go to the Legislature. As you described it, it sounded like what we do today is our final cut and that when we come back we're just packaging. I didn't get that before.

CHAIR WEISSER: That was the process that Rocky had laid out to us in earlier months. If we want to change that, we can.

MR. CARLISLE: Well, I think the intent was that the next meeting would be the approval of the final report with any edits that we find necessary as the result of comments.

CHAIR WEISSER: Oh, okay. Then I stand corrected. We will have one further meeting on the report at which time we apparently will also hear any other public input that we might have verbally in addition to that which we've received in writing before that meeting, because we would want to open that up to public comment.

MEMBER LAMARE: That's why I didn't think public comment was really needed on this report that we're working on, because we're trying to prepare a draft to go to the public for their comment. Of course, if there are some important things

that we should hear today before we finalize a draft we want to hear them, but I don't think that the people here today or on the webcast need to feel that they won't have any say after this. In fact, this is to be released to them.

CHAIR WEISSER: I asked Rocky whether we should and whether we legally need to provide an opportunity for public comment today, and he checked with legal, and they indicated that because we're discussing specific recommendations in the report, that in fact we should provide an opportunity for public comment both today and obviously when we come back in January.

Any other comments before we dive in?

I'm going to suggest that rather than starting at the beginning of Part II with the first discussion, which is the quantifying the emission reductions, that instead we start on page 3 of this Part II with some of the specific recommendations that ARB and BAR made in their report, and at the end of reviewing the specific recommendations we then return to this first section of this section and discuss that, if that's okay with members of the Committee.

The first section is dealing with the first recommendation of the report, clean screening of the fifth and sixth years.

This, as with each of the other recommendations that follow, I should say that I spent a considerable amount of time with Rocky attempting to come up with a consistent editorial style. I can't lay enough praise upon Rocky for the work that



he's done on this report. It has encompassed evenings and weekends uncounted. Well, they're counted by me because he kept on calling me, but he really did a yeoman's job in attempting to pull this together and deserves our thanks.

I think the issues that I'd like to address first would be to ask if there are any overriding policy issues or concerns that any of the Committee members might have, and then chat a little bit about some of the less important but editorially oriented changes that I would suggest to this section. So are there any major policy questions?

Let me summarize the recommendations for the public that we're making in this section. You don't have the hard copy in front of you, but basically we're recommending that BAR and ARB develop a methodology to identify and call in sixth year and earlier models for a Smog Check inspection if they're identified as possible high emitters. Of course, this goes as a refinement to the legislation that was passed this year that excepted these vehicles from the Smog Check Program. We're suggesting that ARB and BAR use a newer technology to identify these vehicles, and specifically we're suggesting that they use one or a combination of four approaches.

First, to use remote sensing to identify specific individual vehicles that appear likely to fail if they were subjected to Smog Check.

Second, use the data gathered through BAR's roadside testing that might suggest that a particular make or model of vehicle have a high probability of failing.

Third, the data gathered as a result of CARB's vehicle surveillance program.

And fourth, the make and models of vehicles identified as possible high emitters using BAR's vehicle information database.

The concept here is to not try to undo what the Legislature has done, but frankly to refine what they have done to be able to capture the lion's share of the emission reductions that are lost through the exception that was made through the legislation via use of technology. Calling in a small percentage, let's say a third of these of these vehicles, we can capture close to three-quarters or even more of the emission reductions that might be lost.

Mr. Carlisle?

MR. CARLISLE: Mr. Chairman, if I may, the report identifies for the fifth and sixth year that we lose four tons per day of hydrocarbon and NOX. It doesn't speak to the issue of the first four years, I don't believe, and so this may have an additional benefit, because there's nothing in legislation that prohibits the first six years from being called back in if it's identified as a possible high emitter.

CHAIR WEISSER: Well, once again without knowing it, I guess I'm tossing out onto the table a potential modification of

the draft as put in. It would seem to me that if it makes sense to use these tools for the fifth and sixth year, why not apply them to earlier years.

MR. CARLISLE: Well, we said in there the first six model years.

CHAIR WEISSER: That's what I thought.

MR. CARLISLE: So we're covered.

CHAIR WEISSER: Now I stand corrected of my own correction. Are there any other comments regarding this?

I do have a couple of editorial suggestions, and I don't know if you want me to go through these or just do them later. The suggestions frankly are all ones that are oriented toward clarity, although I would suggest pulling out a piece of what's now labeled item number 2 on page 4 and separating the two thoughts. There are two sentences in number 2 and I think they're two specific thoughts. I'd want to move the cost issue, the cost of reducing emissions, from this segment as a separate item. I'll have these available for you and Lynn, Rocky, afterwards. No change in the policy aspects of the report.

I also think we need to be clear in item 2 you also start off, Rocky, by saying, "According to the report, excepting one-third of the fifth and sixth year..." blah-blah-blah, what I'd suggest is you say the "best performing one-third of the fifth and sixth year," because I think that's the intent here. I have these written down and I'll share them with you after.

Are there any comments on what I've just said? Bob?

MEMBER PEARMAN: Nothing.

CHAIR WEISSER: I'd also suggest that we eliminate the use of the word 'applaud' throughout the report. The Committee hasn't applauded anything insofar as I'm aware, and in the proposal we talk about applauding the Legislature for their insight in allowing inspection of any sixth year, and I think what we should just say is that we particularly support the measures allowing an inspection for vehicles deemed likely to be high emitters.

The only question of substance that I have, Rocky, comes on page 5, and it relates to the estimate that the average cost of a Smog Check is 46 bucks. I'll tell you, that seems very, very low, and I've done a random survey and the number I'm running into is almost twice that number, so what's going on here?

MR. CARLISLE: But that's in the Bay Area, right?

CHAIR WEISSER: That's correct.

MR. CARLISLE: Okay. Bay Area is going to be higher, but this was taken off the 2002 BAR data off the VID. Even now, with the Bay Area being fully implemented, I believe I checked and it's closer maybe to 49 today, but again, I was relating to their dataset that they use which was out of 2002. Statewide average currently is the most I think was \$51 that I looked at any one quarter. That's off BAR's executive summary that's available on the website.

CHAIR WEISSER: Are the stations identified in terms of what their charges are, or does the consumer have to call 15 to find out the best prices?

MR. CARLISLE: Yeah, they would have to call 15 and find out.

CHAIR WEISSER: Okay. I'm concerned, of course, that we be careful in how we identify the loss of revenue to the Smog Check stations, because that loss of revenue is also a gain to the consumers who aren't paying it, so we have to be kind of delicate in terms of how we word this and I may want to do a little further editing associated with that.

MR. CARLISLE: Okay.

CHAIR WEISSER: Benefits, you have a statement towards the middle of that paragraph that goes like this. "According to BAR test data, the average Smog Check failure rate for fifth and sixth model year vehicles is five percent." Then you go on to say, "As a result, the majority of motorists could benefit from the cost savings on an emissions test." I just don't understand the purpose of that sentence.

MR. CARLISLE: My thought there was that in this case you're exempting the majority of the vehicles or theoretically 95 percent if you specifically identify the 5 percent that were going to fail. Of course, you couldn't get it that close, but certainly the majority would benefit from the cost savings because they wouldn't be called in for this test.

MEMBER HISSERICH: Is it the majority of motorists or it's really the majority of those driving vehicles that are six years or less, because -

MR. CARLISLE: Yes, it would be the majority of the fifth and sixth - six years and newer vehicles.

MEMBER HISSERICH: Which is presumably not the majority of motorists.

CHAIR WEISSER: That's a good catch.

MR. CARLISLE: Yeah, it does require clarification.

CHAIR WEISSER: Jeffrey.

MEMBER WILLIAMS: I'll pick out the same sentence. Even when there's a 40 percent failure rate for a particular model year, the majority would have benefitted not having it done by this logic, right?

MR. CARLISLE: Right.

MEMBER WILLIAMS: So kill the sentence.

CHAIR WEISSER: My belief is that we should just excise or delete this sentence.

MR. CARLISLE: That's easy.

CHAIR WEISSER: We may want to break that first sentence up and do some other minor edits, but -

MEMBER HISSERICH: Well, if I may, relating to your point and the one above where the benefits to the motorist is in the savings in not paying those things is more related there in a sense than it is to the other area, so the connection between the fact that there's some loss of revenue to the stations, the

corollary to that is that there's some savings to consumers or to the public, so maybe there's a way to fit it in there somehow to convey that.

CHAIR WEISSER: That's what I'd like to try to achieve and I don't think we quite get there yet.

MEMBER HISSERICH: Right.

CHAIR WEISSER: Any other comments on this? Are there other comments on this item as a whole that Committee members would like to make?

MEMBER DECOTA: I don't know if it's proper, but on page 2, last paragraph.

CHAIR WEISSER: It's not proper, because we're going to come back to the first two and a half pages at the end.

MEMBER DECOTA: That's why I asked.

CHAIR WEISSER: Okay. So to summarize, what you're hearing is a discussion saying that the Committee fundamentally understands the rationale behind what the Legislature did this year in terms of extending the exception to older cars; however, we are not thrilled with the emission reduction loss that that generates and we're going to be putting forth what we think is a reasonable approach to capture the lion's share of those emission losses with the least economic impact on consumers. We're trying to capture them in a cost-effective manner.

Are there any comments from the public on this particular item? Mr. Ward.

MR. WARD: Randall Ward, California Emission Testing Industries Association. I appreciate the clarification that Ms. Lamare did earlier with regard to this process. I was under the impression looking at the agenda and then not having a copy in front of me, that this was simply editing of a draft, that policy issues would be necessarily void from the discussion today. And not having a copy of it in front of me so that I can look at it and give some kind of thoughtful review to it prior to coming up, and I think other members of the audience are in the same position, is not in the best interest of time either for the public or the Committee.

With regard to this specific issue, I would not understate the impact to the smog inspection community. That smog inspection community went into business, took considerable risk with a procedure and set of laws that existed at the time they made that investment. All of a sudden it changed. The loss of business is fairly significant, and I don't think that should be downplayed. I clearly understand there's a savings to the consumer, but at the same time, there was a good faith on the part of the business community to meet the State's obligation that frankly was compromised here, and I think that should be so stated as well. Anyway, thank you.

CHAIR WEISSER: Well stated, Mr. Ward. Sir.

MR. RICE: Bud Rice with Quality Tune-up Shops. I'd like to echo the last comments in terms of the financial impact that's being borne by the test-and-repair community out there.



One comment I just made to a colleague earlier was that many times at our locations 17 cars are coming in for smog inspections. We have to turn away all but 2.

We've made a tremendous investment in terms of training, hiring qualified people, equipment purchases, lease purchases, maintenance, all that stuff. To have 17 cars come in because they want to do business with us and only be able to serve 2 is dramatic, and I'd like to see that addressed as well.

My next comment was about --

CHAIR WEISSER: Could you tell us why 15 of them you can't serve?

MR. RICE: Because they are directed to test-only stations.

CHAIR WEISSER: Thank you. So it's not related to this issue. Go on.

MR. RICE: Okay. Secondly, you talked about remote sensing, roadside checks, CARB data and profiles for high emitters as the reason why this topic was being discussed.

CHAIR WEISSER: Well, it's the various databases that we believe would be available to focus in on the most likely failures of this group of cars.

MR. RICE: Quick comment on that. Has there been any discussion as to the effectiveness of remote sensing? Last comment I heard, and I would admit it's been awhile, was that it was about 50 percent, that when cars were tested by remote

sensing there was a 50 percent true/false kind of a rate that was attributed to remote sensing. Has that been improved on?

CHAIR WEISSER: The information that we've received in past briefings indicates a much higher accuracy level, but we'll have a much better idea of that when the BAR/CARB demonstration projects are completed, which are under way right now.

MR. RICE: When you say the number's higher, do you have any feel for that?

CHAIR WEISSER: No, I wouldn't hazard an estimate.

MR. RICE: Thank you.

CHAIR WEISSER: We'll start from the back. Larry.

MR. ARMSTRONG: Yes, Mr. Chairman, my name is Larry Armstrong. I have some concerns about the way that the Committee is leaning towards presenting some of these issues. The concept that the consumer is saving money by not buying a Smog Check is pretty interesting. The consumer that owns that vehicle is paying a fee to the state that probably most of the public are not aware of and they're getting nothing for their money.

The cost savings is, if you take just the raw cost you could say that there's a savings, but if you factor in the fact that those consumers, a lot of their vehicles are going to be out of warranty and they're going to get shackled with the full cost of repairs that could easily have been under warranty, the picture starts to look a little bit different.

I believe that if this Committee actually wants to put a report out that is a fair report and something that is of benefit to the community, that those kinds of things should also be presented in there so that somebody reading the report would get an idea of some of the factors that are involved instead of lobbying for the remote sensing community, which seems to be the trend here.

I would also like to ask the chairman, you're involved with a non-profit company or whatever you call it, CEEB. What is the public status of that organization's recommendation on remote sensing?

CHAIR WEISSER: I'm not sure what you mean, Larry. If you're asking whether CEEB, my organization, the organization I'm president of, has supported the development of advanced technologies such as remote sensing to assist in making the Smog Check Program more cost-effective, we have and we still do. Was that your question?

MR. ARMSTRONG: Yes, that's my question. Because essentially from my point of view, as this Committee has allowed the siphoning of vehicles away from one system to move revenue and profit to another system, from my point of view you're lobbying for the remote sensing community. That's just my opinion, but I think I'm entitled to it.

CHAIR WEISSER: I should point out that, sadly, my organization receives no financial support from the remote sensing community.

Dennis?

MEMBER DECOTA: Unfortunately, the audience doesn't have a copy of the draft –

CHAIR WEISSER: But now they do. Are you passing those out?

MS. FORSYTH: No, they're on the back table.

CHAIR WEISSER: Could I ask you to help pass them out? Thank you.

MEMBER DECOTA: As you get the proposals, SB1107 has already exempted make and model years five and six. The issue of remote sensing recommended by the Committee in its proposal here is to find a way of re-injecting those offending vehicles back into the system. So, you've lost everything.

The Committee is trying to find a way to recapture what has already taken place in the Legislature in a method that is best business practices and also industry and consumer aspects in mind, so I believe that's the attempt that's being done here and I hope that industry realizes what's going on, and as you're receiving it right now you'll be able to read especially why in the proposals that Rocky has broken down, I think it'll help you understand the issue better.

CHAIR WEISSER: Thank you, Dennis. I think that very clearly states what the intention was. Not because, frankly, I believe it's this Committee's job to support the industry, but it's this Committee's job to support those measures that will

help clean the air. One aspect of that is trying to ensure that we do have a healthy industry.

Okay, we have another question. Jeff.

MEMBER WILLIAMS: I was going to make a very similar point, and I guess I can say it this way. I think Mr. Armstrong is misunderstanding. It's not a system we're proposing that remote sensing causes someone to be exempted from a Smog Check, but rather that if somebody is seen to have a very high amount of pollution through remote sensing would then be subject to a Smog Check.

CHAIR WEISSER: Okay, we'll move down to Chris and then Len.

MR. ERVINE: Chris Ervine with Coalition of State Test-and-Repair Stations. On page 4 under proposal, I have a real concern about the term 'clean screening' because this insinuates or kind of leans me towards the fact that we're going to run these cars by remote sensing and we're going to exempt them from the smog program.

They're already exempt from the smog program. What we're looking for is dirty cars. We want to flag those dirty cars and we want to direct them to the Smog Check Program.

CHAIR WEISSER: Let me interrupt just for a second. I think when you get a better chance to read it, Chris, what you'll see is that introductory statement makes a reference to the ARB/BAR report where they recommended clean screening in order to exempt. It then goes on to say that the legislation

kind of made that recommendation moot by exempting everyone in the fifth and sixth years.

MR. ERVINE: I understand that, but this is leaving a door open for misunderstanding in the future and I would like to see this solved now rather than come up against something in the future and do battle over this simple wording again. I think that it has a real concern here.

CHAIR WEISSER: Dennis?

MEMBER DECOTA: Chris, you object to the word 'clean screening' as to the intent of avoidance of emission testing; do I understand that properly?

MR. ERVINE: Yes.

MEMBER DECOTA: But in order to take and have some type of balance, the term 'clean screening' in itself in this case does mean the opposite. You understand that?

MR. ERVINE: I understand where the Committee is trying to go with it, but what I am looking at is the future and I'm looking at what has happened to the smog program in the past and the misunderstandings that have happened in the past because of wording, and my concern is that at some future date somebody may say clean screening is a way to eliminate the Smog Check Program and we're going to run all these cars through and now all cars that pass through remote sensing that are found to be clean or non-polluting above the legal limits are exempt from the smog program and therefore do not have to go to the Smog Check Program and they will receive a letter from the state that

says 'Congratulations, your vehicle has passed a remote sensing station and we've determined that it's a clean burning vehicle, and for a nominal fee we'll waive the Smog Check requirement.'

CHAIR WEISSER: Thanks, Chris.

Tyrone?

MEMBER BUCKLEY: My question is unrelated if you guys want to continue discussing this.

CHAIR WEISSER: Okay, let's continue. Is yours on target on this point, Jude?

MEMBER LAMARE: I support what Chris is saying. I think our proposal should be the first thing discussed when it says proposal, we should take this paragraph at the end of the page and say our proposal is that BAR and ARB develop the appropriate methodologies to identify high emitting six year and newer, blah-blah-blah.

I would say take off the first part of that sentence about clean screening. You know, we're beyond the ARB/BAR report. The Legislature has spoken, we have 1107, that's the status quo. 1107 says this and we think, therefore, the ARB and Bureau should go ahead and develop it. We don't need to belabor the past and I think it gets in the way of getting to our recommendation.

CHAIR WEISSER: Well, I concur with the notion of switching the order of the paragraphs, Jude, but I do think it would be important for the reader to understand the context of our recommendation.

MEMBER LAMARE: Well, if that's the case, I still think you should take out the words 'clean screening.' It's jargon. It means different things to different people and we should not use shorthand like that if we're trying to explain to people what we're doing.

CHAIR WEISSER: Okay. I'm sure we're going to have a lot of time in future years, if this Committee continues to exist, to discuss the process that was formerly known as clean screening. That's not the focus here obviously. What we're trying to do here is suggest that as if the remote sensing technology develops in a robust fashion, that it's one tool that could be used of several tools to identify those vehicles that are in the first six years that are more likely to fail than others. Okay.

MR. ERVINE: Then the second part of my question was, you are recommending remote sensing for determining high polluting vehicles on six years and newer, not just five and six?

CHAIR WEISSER: That's correct. Any other questions here? Then we'll go to Len.

MR. TRIMLETT: Len Trimlett, smogrfg. I'd like to correct some misinformation that came out just a minute ago. Contrary to the claims that accuracy is greater than 50 percent, I don't believe it. Here's my basis for it.

The specification says vehicles 14 inches or lower in ground to body panel clearance, there is a requirement for it.



There is no requirement to handle vehicles of greater than 14 inches ground to body panel clearance. That means you're going to get bad data out of pickups with lift kits, out of class B trucks, semis. You're going to get misinformation out of tow trucks towing a vehicle or any car towing a trailer.

It takes two things to handle to get an accurate reading. You have to have an accurate emission and you have to have an accurate license plate reading. If you look at the side of a pickup towing a fifth wheel trailer, there is no way it can see the license plate. That's inaccurate information.

They haven't proved to me that they can handle diesel vehicles, okay? Those are in that mix. If they can't handle them correctly by throwing them out, that's inaccurate information, that's false fail, bad incorrect hit. BAR and CARB have been unwilling to address my questions on these issues. They've failed to address the issues. I say I believe you got a 50 percent accuracy coming out of remote sensing, that's it, period.

Now one quick question. As regards the fifth and sixth year vehicles, do I understand correctly that what you're saying is that for fifth and sixth year vehicles you would attempt to bring those back into the system via remote sensing if they do not meet specs?

CHAIR WEISSER: We would try to utilize databases that are available, including remote sensing if it proves out, in

order to bring vehicles back into testing that show that they are more likely to fail.

MR. TRIMLETT: That's fine. I just want to reiterate, I am asserting that the specs says those are inaccurate.

CHAIR WEISSER: Thank you, Len.

MR. TRIMLETT: Thank you.

CHAIR WEISSER: Tyrone, please now.

MEMBER BUCKLEY: My question is just a point of clarification on something that you mentioned, Mr. Chairman, about the accuracy of remote sensing being addressed soon, and I didn't know how soon and by whom?

CHAIR WEISSER: You know, remote sensing has been subject to a large variety of studies over the years. It's gone to the point where it's being used in several states.

California now is conducting a demonstration under the auspices of the Bureau of Automotive Repair and the ARB, a rather large demonstration program of remote sensing. I forgot what the timeframe is for the completion of that study, but I know that there's someone in the audience who very quickly could tell us what the time is when we might expect at least to see a draft report on the research.

MR. GOLDSTENE: Mr. Chairman, James Goldstene, Bureau of Automotive Repair. I don't have the exact date of completion, but sometime next year. Hopefully in the early part of next year there will be some preliminary data. It's a pretty large test, survey.

CHAIR WEISSER: It might be helpful because we have a couple of new Committee members if you could very briefly tell us what do you mean by it's a pretty large test?

MR. GOLDSTENE: Well, I'll have to say I'm not expert on it, but as I recall, we're working jointly with ARB and BAR working together to try to test one million vehicles through the remote sensing device.

Is there an expert here?

MALE VOICE: (Inaudible)

CHAIR WEISSER: Andy, they're not going to be able to hear you unless you step up. Give us, if you can, something more precise than sometime in 2005.

MR. PANSON: Andy Panson, Air Resources Board. I, like James, am not the staff person at ARB who's directly following this, but it is a large test on the order of a million vehicles being tested. The testing started this year, it is ongoing and data will be available next year, and I'm sorry I can't say - I don't want to say what month because I'm not the right person. If later on, if Dave Amlin or Sylvia Morrow from ARB returns, they might be able to give us a little more detail.

CHAIR WEISSER: All right. Well, in any event, it would be helpful for this Committee to have a sense of the schedule, Andy, if you could get something to us, not at this meeting, but just let us know.

MR. PANSON: Will do.

CHAIR WEISSER: Excuse me, Tyrone has some follow-up.

MEMBER BUCKLEY: Also for clarification, would cars that are identified through remote sensing process, if the car was identified as a heavy polluter and it wasn't, if it was six years or older would it be also pulled into the program?

CHAIR WEISSER: At this point under this recommendation that's not being addressed. This is solely aimed at the recommendation in the BAR/CARB report that was overwritten by the legislation last year, the legislation which provided all fifth and sixth year cars are exempt, essentially.

MEMBER BUCKLEY: It's not necessarily our intent to -

CHAIR WEISSER: No, we are not talking about that in this recommendation.

MEMBER BUCKLEY: Thank you.

CHAIR WEISSER: Gideon.

MEMBER KRACOV: Yeah, I think Ms. Lamare's comments make a lot of sense. I think the content, particularly on the recommendations whatever it is, one through seven, is really excellent. I think Rocky did a great job on this and all the Committee members who worked on it, but I do think we should collectively think or the chair should really think about the best way to present each of these recommendations in terms of making it very easy to read, easy for the reader to understand what our recommendations are.

I know that some of this was probably went over at some of the last meetings, but for example, it could be confusing if you look at our topics, sort of the flow. You have

the issues first, then you have the background, then you have the proposal. That's the ARB/BAR proposal, not our proposal. And then we kind of review the concerns and benefits of that proposal and then make our recommendations. I think we have to think about whether that sort of flow is the easiest way for the reader to look at it.

I know we talked before about putting the recommendations up front, and I think we should just give a little bit of time to the formatting issues to make sure whether it's through different headings, whether it's through making some headings bigger, other ways just to make it a very reader accessible document.

CHAIR WEISSER: Are you specifically suggesting, Gideon, that the structure of the report be changed so that you'd have the ARB/BAR report recommendation followed by the IMRC recommendation and then go into the issues, background, concerns and proposal?

MEMBER KRACOV: I'm not really sure. I'd be interested in what some of the other Committee members that have spent a little more time think about it, but I think we're discussing what is the point we're trying to get across and what is the best way to make that point easily accessible to the readers. I think that should really be the focus of it. If the report is going to be sort of a response to each of the recommendations and that is the goal of the report, then I think

it can be laid out in the way that you just suggested, perhaps the recommendation and then our view of the recommendation.

If instead we're going to get a little bit less caught up in what the ARB and BAR said and instead kind of talk about what we think is the best way to approach these, then we can kind of phrase it differently. I mean, I think the Committee does have a clear sense as to what we think our goal of this report is, and I just think we have to put a little bit of time into making sure that whatever the goal is that we communicate it in the most reader friendly way possible.

CHAIR WEISSER: Thank you. Bruce?

MEMBER HOTCHKISS: Yeah, as a follow-up to that, one of the Committee members made a comment about the fact that it'll be staffers in the Legislature that generally are going to be going through this, and I agree that it has to be -- these are people that go through tons of documents in very little time and have to try and pick out the very important topics, so I would think that any members of the Committee who have spent a fair bit of time in the Legislature over in the Capitol talking to these people would have a good idea on how to put it together so that they can get the important information quickly.

CHAIR WEISSER: Gideon, something further?

MEMBER KRACOV: Also just in terms of ordering, for example. We order the report based, I think, numerically in the order that the ARB/BAR did their report.

CHAIR WEISSER: That's correct.

MEMBER KRACOV: As a result, our second recommendation eliminating the rolling exemption has kind of already been done. If we are going to track ARB/BAR and that's the focus of what we're doing, it makes sense to put that second. If on the other hand we're trying to get the most bang for our buck and put the things first that we think really need to be addressing, maybe it doesn't make sense to put something number two that's already been done. I think it's all in here, it's just a question of putting a little bit of brain power into how to organize it in the most easy and valuable way, I guess.

CHAIR WEISSER: In fact, I think we are required to comment on the BAR/CARB report, that is the statutory requirement. Now, we're not limited to that, but in this present case, if you look at what we're really reporting on, it really is just our reactions to the BAR/CARB report. The other issues that we're looking at will be coming forward in a subsequent report, a supplemental report.

So, I think for the purposes of this IMRC report, organizationally it does make sense for us to track the order of the BAR/CARB report. That's number one.

Number two, I too have been wrestling with trying to organize this in a clear fashion and I think we've made a lot of progress from our early drafts, but we're still not there, and we need to do some things in order to bring up front to the reader the issue, what we're recommending and why, and I don't think we do that quite as clearly as desirable. So I don't know

what Rocky's planning for the next four or five weekends, but I think we just found out what one of them will be devoted to.

Jude.

MEMBER LAMARE: I agree with Gideon that the recommendation two should just be thrown out. The Legislature has spoken. Not two, I guess it's three. Sorry.

CHAIR WEISSER: Can we deal with that one when we get there?

MEMBER LAMARE: Yeah, I'm kind of getting there.

CHAIR WEISSER: Okay. Please proceed.

MEMBER LAMARE: The rolling 30-year exemption has been dealt with. I don't think the Committee needs to address that. Although we prepared the report for the Committee because we promised we would prepare the report, if we do include it, it should be very far in the back because it's not relevant.

CHAIR WEISSER: If we assume that everything the Legislature deals with is done, then we shouldn't be making a recommendation to refine the fifth and sixth year exemptions as we're doing now, Jude.

MEMBER LAMARE: No, no, no. This particular recommendation is somewhat special and I'm dealing with it as a special case. That is, it was included in the Bureau and the ARB's 2000 report, it was simply a repeat in this report, and the Legislature this year passed a bill which resolved the issues and removed the 30-year rolling exemption. And so, why would we then want to write a report back to the Legislature



about their solution of that issue when we have no experience with their solution and no input about to review it and no mandate to review their solution?

CHAIR WEISSER: You're now talking about recommendation number three – two, the 30-year exemption; is that correct?

MEMBER LAMARE: That's right.

CHAIR WEISSER: Okay. I think that when we get to this section that I have an approach that might meet what you're aiming at in a way that would also be consistent with us making comments on the BAR/CARB report in the order that they were presented there, but can we wait until then?

Jeffrey.

MEMBER WILLIAMS: I had a very small suggestion as a solution to some of the confusion. Where we have headings that say 'Proposal' why don't we say 'ARB/CARB Proposal' and we have a heading called 'Recommendations' following, which could easily be confused, so say 'IMRC's Recommendations.' That might go a long way towards clarifying things.

CHAIR WEISSER: I think it's one good step toward clarity.

Mr. Carlisle.

MR. CARLISLE: Mr. Chairman, I just had a comment. I kind of like Gideon's idea of for clarification if we put the ARB report recommendation first and follow that by our recommendation. I think that would be a good move in

clarifying. When somebody goes to a section there is a table of contents. I didn't put it in here purposely because I knew this report would change somewhat, but I think if they want to see what the recommendation versus what the report said, I think that would be a real quick way to glean that information. And if then they so desire, they could go and they could read the background and the other issues.

CHAIR WEISSER: I'm surprised that we've gotten to this state without someone raising concerns over our use of the word 'concerns' as a section. I think we're going to have to work on that wording, too.

Are there any other comments associated with recommendation number one? Gideon?

MEMBER KRACOV: It's not necessarily specific to that, just one quickie. Of course, the title to each of these different topics is ARB/BAR report recommendation number one. Now we're going to call it a proposal and then we have the recommendation, so we should be consistent with that.

The other thing, I think, may be to clarify exactly what our goal is in this report. I don't want to go back because we already passed by, but in the introduction we do talk about that we're submitting the report in accordance with section 44021 of the Health and Safety Code. I don't think it would be a terrible idea either to excerpt the relevant portions of that code that talk about what our mission is in the introduction, or alternatively, as one of the exhibits or

appendices include that section so that there would be no doubt when a legislative analyst is looking at this as to why they're even getting this in the first place.

CHAIR WEISSER: I think that's a reasonable idea.

Mr. Armstrong, did you have something on item number one that you haven't said?

MR. ARMSTRONG: Yes, thank you for allowing me again. I did not have benefit of the draft agreement on the first time I came up. There is a difference here -- my name is Larry Armstrong, sorry -- and depending on which you take. The ARB, as I recall, came in and testified before this Committee that years five and six would amount to an 8.9 percent fail rate, and this draft is using apparently a BAR number of 5 percent. The one is almost double the other and I think there's a significance in there that should be addressed.

I find objectionable the last paragraph there that says, "It is worth noting that the extra funding for the Carl Moyer Program provides additional reductions of NOX and particulate matter that more than offset the four tons per day lost as a result of the fifth and sixth model year exemptions and at a cost per ton that is significantly less."

This Committee apparently supported taking the five and six year vehicles out of the Smog Check Program. Well, sir, I see the chairman shaking his head, but I saw the letter that was sent to either the Governor or the Legislature, and I would take that to be a support for removing the five and six year

vehicles that in my opinion prostituted the Smog Check Program to a great extent and was a serious mistake that should have been addressed by this Committee before those votes were taken. And to then turn around today and say that it's a worthwhile thing is ludicrous as far as I'm concerned. Thank you.

CHAIR WEISSER: Thank you. Okay. Mr. Ward.

MR. WARD: I apologize, Mr. Chairman and Committee.

CHAIR WEISSER: Excuse me, Mr. Ward, before you get started. Mr. Armstrong raised a issue associated with the 8.6 percent versus the 5 percent and perhaps you might respond to that, Mr. Carlisle.

I'm sorry, Randy.

MR. CARLISLE: To be honest, I'll have to check that 8 percent issue with ARB. I don't have the ARB data in front of me.

CHAIR WEISSER: My recollection is that Larry is correct, and I in fact had that circled and forgot to raise it, Rocky.

Thanks for your forbearance, Mr. Ward, if you'd now proceed.

MR. WARD: Randall Ward, California Emissions Testing Industries Association. I apologize, I did not have the benefit of the written draft as well, and I share some of the concerns Mr. Armstrong raised about the reference to the Carl Moyer program. I think this Committee already adopted a policy with regard to that legislative change and the recommendation should

be consistent with the letter that was sent by this Committee, whether I agree with it or anyone else agrees with it, but I think that is your adopted policy. Thank you.

CHAIR WEISSER: Thank you. I don't believe the recommendation or the discussion is in conflict with the letter that we sent, which in summary indicated we understood the rationale and we appreciated the emission reduction benefits, but we decried the impact on the light duty vehicle emission reduction program embodied in the Smog Check Program and felt that needed to be addressed. I think this is one step in terms of addressing that.

Okay, I have another question of you. I'm on page 3 of 29 where we list a number of benefits of the program that are not directly measured, the motivation for vehicle owners to maintain their vehicles so they do not fail. The second one is —

MEMBER LAMARE: That belongs to the emission reduction section that we're going to deal with later.

CHAIR WEISSER: Never mind. Thank you, Jude.

Just as an incentive for us moving through this, I would suggest that before taking a break for lunch that we do at least two more items. I believe the second item, which is dealing with the 30-year rolling exemption, we might be able to address very quickly.

As you heard previously, Ms. Lamare has recommended scrapping this item totally, and what I would recommend instead,

Jude, is that this item be truncated by 98 percent in that we just identify what the ARB/BAR report suggests, what the Legislature did, and add that the IMRC supported the legislation and supported eliminating the 30-year exemption. Very short, should not go more than three paragraphs.

Does the Committee agree with that approach? And this is just pure editorial, we're not doing anything with that. On this issue I'm not going to take any public comment, it's just kind of an editorial squishing, unless there are members of the industry that would like to reinstate a rolling 30-year exemption. Hearing none.

Recommendation number three, you all have it in front of you. I'm on page 9. It talks about the report's recommendation for a 15-year and older model year vehicle Smog Check Program. Has everyone had a chance to read through this? Not from an editorial standpoint but from a policy standpoint, are the members of the Committee comfortable with this recommendation? I think it's one of the more important ones in the report, frankly.

MEMBER DECOTA: The answer is yes, I feel very comfortable with it and I think it makes sense.

CHAIR WEISSER: Jude? Tyrone?

MEMBER BUCKLEY: I have concerns about this recommendation because of the impacts it could have on low income folks that are mentioned on page 11 and 12. I was wondering, in fact, to get some clarification on the language

that's included that, "Any additional financial burden on this segment of society would be difficult to implement politically no matter what the apparent benefit in terms of emission reductions."

My concern is based on the same concern that many environmental justice advocates and people who advocate for low income folks had with AB2683 in that it would impact low income people disproportionately. And in that, we have three things in this Committee that are forthcoming that we mention on page 2 and 3 that are going to give us good information on the success of the Consumer Assistance Program that to make a recommendation before getting that information out seems a little putting the cart before the horse. So if I can get some clarification on even the language in the concerns section.

CHAIR WEISSER: What sort of clarification?

MEMBER BUCKLEY: I'm not exactly sure what it means.

CHAIR WEISSER: Okay. Well, let's just have an open discussion of this. I think I understand where you're coming from. You're not objecting to the, what I'd characterize as the facts of the situation that these older vehicles are higher polluting. What you're concerned about is that by going to an annual rather than biennial inspection, that lower income people who tend to own these vehicles more often than newer vehicles are going to be subjected to an additional economic cost by having to take their car in and get it tested and then getting it repaired if it fails.

And I think that from my standpoint I agree that that's an issue. I think what we have to do is couple our recommendation for an annual inspection of older vehicles with an aggressive approach to try to generate, garner sufficient funds to offset these additional costs to lower income people, and I think that's what we do in the report.

I don't think we need to wait for the consumer information survey that we're doing or for anything else to put that concept out, that on the one hand we need to do those things that will have these cars operate the best they're able to operate, and we need to do that in a way that offsets and mitigates the economic impact on lower income people. I think that message can go out right now, Tyrone. That's where I'm coming from. I don't think the information that we're going to get from the survey that the subcommittee is doing is going to change that at all. That's my perspective. I'll go to John and then Jude.

MEMBER HISSERICH: Yes, in this subcommittee we did discuss this at some length and share Tyrone's concern. I agree with you that we need to get on with it. I think that the piece that's not quite clear is whether the revenue that's going to be generated is going to be adequate to serve these cars, but as you have characterized it in the past, we can't let the good get in the way of the perfect or the perfect get in the way of the good, because when they talk about \$313 as the average repair for a vehicle, I think that's probably a low fee having heard an



acquaintance talk about \$600 each time he takes it in to get this thing fixed.

So we may not generate enough money to accomplish this in the near term and I think we need to be very clear with the Legislature, however they enact this, that the dollar flow really be as generous as we possibly can make it in terms of how to capture dollars and put them into the pool to either retire the vehicles or repair the vehicles, most likely to repair them I think is the more likely scenario. Because we've discussed this a number of times and we understand that this is a group that will be potentially burdened with this, but we need to get on with it and we need to, you know, do everything we can forcefully to keep the cars running in a clean manner.

CHAIR WEISSER: Okay, we'll go to Jude and then Bruce.

MEMBER LAMARE: Thank you, Mr. Chairman. When we began the process of evaluating the Smog Check Program, it seemed to me that a huge missing piece was how does the consumer experience the program? Every month we hear about providers and people who are knowledgeable about the system from the point of view of providing Smog Check inspections and repairs, but we do not hear from the consumer point of view.

I think it's been over six months since we initiated a process to do a consumer survey, which I was involved in because that's an area that I work in, and I can tell the Committee and the public that this survey was considerably downsized and manicured to be quite small, and as a result, because of cost

reasons, and then further has been delayed due to various contracting issues, issues of approval by the Bureau of what's in the questionnaire, what's not in the questionnaire. Nevertheless, we are making substantial progress.

But I, frankly, am very uncomfortable with broad scale recommendations in the absence of having any kind of information at all that's independent, scientific information about how the consumer is experiencing the program.

I really support Tyrone on this. I think one of the things that we wanted to get from our consumer information evaluation was information about the consumer's level of knowledge and where they get their knowledge about how to get the job done. These are people that we're going to be surveying who have failed, so those are exactly the people that this annual Smog Check would be directed towards or among that group.

We don't know what the availability of Gold Shield is to those folks who are income eligible for repair assistance, so we basically don't really know about this low income population, how they're coping with Smog Check today given the biennial program. We don't know the extent to which people who are income eligible are even aware that they – sure, it says it on their inspection report. We don't know what that means to them.

Then there is the issue of CAP eligibility which was raised for the Committee. It's a statutory requirement that those who are directed to test-only be eligible for CAP assistance regardless of their income level, and as people have

considered this over the last few months, it has appeared to be a relic of the past. It doesn't probably have a lot of relevance today, and especially in the context of making huge changes in the Smog Check Program for it to be more efficient and effective in emission reductions, to not have that issue resolved is disturbing.

We know that test-only referrals have gone up over the last two years rather dramatically, so more and more people are eligible for \$100 deductible. Most repairs are under \$150, as I recall. But we really don't know what is happening to the lower income folks and whether they're getting more than \$100 that was intended by the legislation.

There's another element here which is the SIP requiring that by 2007 the ARB/Bureau, as I recall, will have in place a program to do light duty replacements of catalytic converters and so on, and so you've got a co-occurrence of a number of different elements coming together.

In the discussions that I have had on this issue with various people, it seemed like a good idea to target within the 15-year and older group those most likely to fail and to begin to ramp up on an annual inspection. To blanket everybody that's more than 15 years old goes in for an annual inspection is, I think, quite a bit different than a selective implementation, careful, thoughtful, and make sure that the people who are coming in know and are getting the CAP assistance if they're eligible for it.

So I would say, while I understand the rationale for more smog checks for vehicles more likely to fail, I totally support it. When 40 percent of the failed vehicles fail again within six months of a Smog Check, I'm extremely concerned that repairs be durable and that the cars come in and get cleaned up.

I agree with the policy thrust of this recommendation, but I think we really have to fine-tune it to respect the issues that Tyrone has brought up, and until we get more information about consumer impacts and consumer experience and the most impacted population, obviously we're not expecting a thorough analysis of that to come out of the little survey that we have finally managed to launch, and the data from that should be available before we complete this report so that it may provide some reassurance to us.

Nevertheless, we don't even know if we have enough Gold Shield stations in the state to adequately serve the needy population. We have no independent assessment of how many do you need and where do they need to be located, and so I strongly think we need to fine-tune this recommendation so that we're supporting more frequent inspection and maintenance for older vehicles that are more likely to fail Smog Check, but not to a full endorsement of an annual inspection for every 15-year and older vehicle until we know more about the impacts of the program. Thank you.

CHAIR WEISSER: Who else? I think that was very well spoken, Jude. I think we need to return to what you've said to

try to extract some specificity as to what would work in your mind and would work in Tyrone's mind to both capture the essence of the Committee's desire to move into more frequent inspections of the 15-year and older vehicles, but to do it at a pace that is commensurate with low income assistance available to cover the costs. That's what I'm hearing from both of you. And not merely the low income dollars, but also making sure that the communication systems to ensure people are aware are working.

So I'm going to start down here and work my way down. Do you have something to say on this issue, Dennis?

MEMBER DECOTA: Um-hmm.

CHAIR WEISSER: Yes, please.

MEMBER DECOTA: I believe there needs to be a broader understanding of this issue as Jude and Tyrone have stated, but I also believe that there is a cost savings to lower income consumers by keeping their car in compliance on an annual basis in just gas mileage alone and the price of a gallon of gas in today's marketplace.

I also believe that they are 40 percent of the problem, which is huge. I mean, if you look at the HC and CO components of reductions on a daily basis, I think that there's a great deal of merit that can be assigned to an annual test on a car that's 15 years or older or exceeds a certain mileage on that vehicle that would both drive down costs again to consumers because of a well-maintained vehicle.

And I also believe that society must support and help folks to stay in compliance and that we have the ways of doing this through the vehicle repair fund and also the scrappage program, but some of these cars are far less expensive to repair than a modern vehicle is, and to bring them into compliance should not be taken lightly as far as the ability to reduce emissions through a well-maintained fleet, and I think we need to take and weight that very carefully before we make a decision. Thank you.

CHAIR WEISSER: Thank you. Jeffrey?

MEMBER WILLIAMS: Perhaps we can add to recommendation number five where it says Consumer Assistance Program. Really these have to be paired if an annual inspection and the Consumer Assistance Program has to work better. The funding for that has to be part and parcel.

CHAIR WEISSER: So what you would be suggesting then is to implement an annual inspection program as defined in this, which has a whole bunch of exceptions where people get out of the annual inspection if they pass a couple of Smog Checks, blah-blah, but what you suggest is to carefully pair the implementation of this annual inspection program to ensure that you're able to cover low income assistance.

MEMBER WILLIAMS: Yes.

CHAIR WEISSER: Okay.

MEMBER WILLIAMS: On related subjects, you just raised one that there could be some exceptions here based on previous

smog test results and so forth. I think we want to be very careful in our recommendation number one authorizes the BAR to implement annual Smog Check inspection for older model year vehicles, I think we want to be very clear there that it would be the same as a biennial Smog Check in any other way, it's just annual, because we haven't been too clear about that in the past.

And likewise recommendation number two provides BAR some flexibility in identifying the appropriate model year vehicles required to be annually inspected. I believe what we're trying to say there is that as certain stages of technology come, that's really what the break point is, like in 1996 with OBD II and so forth. Fifteen years isn't special, it's those changes in technology, and I think that's what we're trying to say in number two, but that's fairly opaque as written.

CHAIR WEISSER: You're on the recommendations page?

MEMBER WILLIAMS: I thought that's what we were talking about.

CHAIR WEISSER: Is that accurate, Rocky, what Jeffrey just said, is that your intention?

MR. CARLISLE: Yes. I mean, it wasn't the intent to hold them hard to a 15-year and older number. I mean, if technology improves to the point where you can go 18 years as the fleet ages, then so be it, but it was to give BAR that flexibility.

I also wanted to add, too, we haven't got there yet obviously, but the last item is the BAR budget and that also suggests that the Legislature return the borrowed money to the HPRRA fund, which would be the way we've got it written at a five-year repayment schedule, so about 22 million a year additional funding to help with the Consumer Assistance Program. Because I know that seems to be the issue that there may not be enough CAP funding to fund those people that need funding on this issue.

CHAIR WEISSER: It seems to me in this item that we need to make some sort of cross-reference to that last item to indicate that the Committee recognizes that this could place a higher demand on funding and refer the reader to that last item where we try to get back some of the money that has been utilized for other purposes.

It sounds to me from what Jeffrey said that we really need to completely rewrite number two, but I'm not sure how. Number three.

MEMBER PEARMAN: I don't understand. You have to completely rewrite recommendation number three of the five recommendations or the whole —

CHAIR WEISSER: No, no. Well, that may be, depending on what we as a Committee decide in relation to what Jude and Tyrone's concerns are. We may want to modify this recommendation to, if what they have been talking about enjoys the Committee's support. Dennis is raising, as I did, kind of



an opposing point of view that the policy perspective is in place, that we're not going to get a definitive answer for the report that we're performing right now. It would be helpful information, but I don't think there's going to be or I don't know if there ever will be a definitive answer on how the program works, particularly with low income folks and particularly with the availability of Gold Shield stations to low income folks who fail the test. I just don't think we're going to get complete closure on that.

I'm going to continue working our way down and hope that the hunger pangs aid us in trying to focus our thinking as to how we're going to try to get this item toward closure. Who's next? Tyrone, you get a second bite.

MEMBER BUCKLEY: I just wanted to say that I think some of what Mr. DeCota said kind of highlights the issues that I'm concerned about if these folks are in fact 40 percent of the problem, and BAR testified earlier that they have no idea what demand is at this point, that could increase demand for the Consumer Assistance Program in ways that we probably can't entirely imagine.

CHAIR WEISSER: I think there's 40 percent failure rate of these older —

MEMBER DECOTA: No, 15 years and older.

MEMBER BUCKLEY: Well, I guess the idea, though, is that it would increase the amount of folks who would need the Consumer Assistance Program or who would want to maybe take

advantage of the Consumer Assistance Program. And considering we don't have an idea of what demand is now and BAR spends all the money that they have now, my concern is that we don't actually have enough information to suggest something that would have such an impact.

CHAIR WEISSER: While they appear in this year's budget to be on track to be expending what they budgeted for, according to what we just heard, I do know in past years that that's been undersubscribed. I mean, I helped sponsor the legislation that put in the low income assistance program and we were very disappointed by the low level of people applying for that aid in the first several years. Now that's changed and I think that's a good thing as the word has gotten out.

But you are right, that we don't have a good way of estimating how much more would be needed, we can only say it's likely more would be needed and therefore we want more funds to be available for this, which is what we're saying here. If we were to wait until we knew with certainty how much more we would need, we'll never do this.

MEMBER BUCKLEY: I understand that, and I think I'm comfortable to some degree with the idea of cross-referencing the budget information, but maybe in some way or another mentioning the lack of information that we do have on how this is going to impact low income populations.

CHAIR WEISSER: I think we might be able to do that.  
Bruce?

MEMBER HOTCHKISS: Yeah, I'm hesitant to wait on this, to delay this. I kind of agree with the things Dennis said but I also feel that we would in essence be doing a disservice to low income people. Besides the benefits that Dennis talked about, they generally suffer worse from pollution-related illness, which costs society a large amount of money. We don't get to count that money because it's not dollars per ton.

And I just think we need to encourage the Legislature as much as we can to be creative in finding the funding to help these people repair or retire their vehicles and get them into other vehicles. We can't just keep kind of saying, well, they're low income and they can't afford it so we'll put it off until we find the money. I mean, I'm not sure how many sick children and grandmothers we need to keep creating, and simply because they're low income. We have a duty, I think, as a society to make sure that their health isn't effected any worse than anybody else's, and if we put it off, the cost will probably end up being greater to society than by implementing it and maybe a few of them will have to bear the cost until the Legislature comes up with the money.

CHAIR WEISSER: Thanks. John and then we'll go to Jude and then Robert.

MEMBER HISSERICH: Very quickly to follow up on what Bruce said. I think there's some evidence recently about where disproportionate impacts of air pollution go affect low income communities. I think the legislative debate around implementing

such a program may well be an opportunity to bring out these very issues and to not only assure – well, I guess assure, but really stimulate the Legislature to address the issue of how we deal with this either through retirement or repair of these older vehicles.

It's not going to happen in isolation, it's going to happen, I imagine and we've even addressed to some degree here, that this will become a pretty high profile debate in the Legislature. I hope it will in order to stimulate the appropriate response to addressing this societal problem. We need to do something about it. I'm hesitant to wait. I think it ought to go onto the agenda, get an author and get working on it, because we could wait a long time if we don't.

CHAIR WEISSER: You know what, I'm going to reverse the order to let Jude go last, so we'll start with Dennis and work our way back toward Jude.

MEMBER DECOTA: The Committee must look at the issue of the 30-year rolling exemption coming back into effect as it relates to this issue. Those cars are going to be picked out through remote sensing and other types of profiling that will occur. It's better to have addressed the issue and try to address the financial aspects of how to do it than continue to pollute.

I mean, I can't emphasize this enough. If you just did a vehicle miles traveled on those year vehicles and took an issue of a car in good condition, gas mileage, versus a car that

was not kept up, you would see far more expense in the waste of gas and creating pollution than you would in the test itself. So we as a society need to take and, I believe, get a handle on how to do this. We need to protect our environment in doing so and I think that these cars are offenders that need help. We need to find a way.

CHAIR WEISSER: Thank you. Robert.

MEMBER PEARMAN: Yeah, I'd be strongly opposed to doing nothing or deferring this item. Perhaps it needs some redrafting. Being on the subcommittee, the way I looked at the language here was this expressed kind of a package of recommendations that we wanted that had to be kind of implemented in some sort of coherent fashion together, but we can't predict exactly how the Legislature or the agencies will do that.

But again, it says "Requires the additional compliance fees be deposited, requires a methodology to excuse certain older model year vehicles least likely to fail, and requires that the vehicles qualify for Consumer Assistance Program." So it wasn't the intent and it doesn't say that every older vehicle will be tested; the idea would be to a more manageable number, and we want them to put these additional fees into the CAP program and we can augment that by what Rocky just added as the additional repayment of the loan as being a part of this too.

So this is all kind of dynamic in terms of how the law and the regulation will be adopted. Now, maybe the point that

to some extent Jude is making can be dealt with where we talk about requiring the vehicles subject to the annual inspection qualify for a Consumer Assistance Program repairs. I guess the point is that should be a practical qualification, that there's enough stations available and enough money available to pay their CAP share, so maybe we can augment that theory by making a more realizable use of the CAP program, but beyond that I don't think there's any reason to delay this till we have perfect information.

CHAIR WEISSER: I want to make sure I understand. What I heard you say is you want to move forward with this kind of recommendation. We should increase the discussion in this paper to bring in some of the issues that we talk about in the budget paper associated with getting some of the funding back to make the increased funding for low income consumer assistance. And we should implement the program in a measured fashion so that we don't exceed the ability of the low income assistance program to cope with the demands of low income participants. Is that an accurate reflection of what you said?

MEMBER PEARMAN: Exactly, and there will be a lot of ways to do that. For example, if there are methods to clean screen, if you would, the fewer stations available, the fewer money available, maybe that means you have a lesser number that winds up being tested. I mean, you adjust that. We can't predict that right here, but I think we just have to put those concepts in our recommendation and work with ARB and the

Legislature as they fine-tune it in the future. I don't think we can wait and then fine-tune it as a perfect package to present.

CHAIR WEISSER: That's very interesting.

Jude.

MEMBER LAMARE: Well, the Committee members have some really good creative ideas and language. I do want to emphasize that last year we heard a great deal about the 185 percent of poverty level for income eligible assistance and whether that is an adequate level. There fact that there has been no evaluation of that level. Proponents of the low income health community proponents have suggested 225 percent. Putting more money out there surely will be necessary, but we don't know whether the level of support from consumer assistance is equitable. We don't know that the people who need it are now eligible.

So Jeffrey has emphasized that when we make this recommendation that we're making a recommendation for an annual Smog Check that is in every way the same as the biennial that we now have, and I for one think that we have to be a little more proactive on the consumer impacts on low income folks in this recommendation, that because we have not been able to do that kind of analysis of the social equity of the Consumer Assistance Program, we don't know the consumer impacts, I would suggest some language as follows, just as an idea of how we might balance those in this recommendation.

If we had a whole other section of the report about social equity, Consumer Assistance Program availability versus need, if we had another section we could refer to, then we wouldn't need to do this, but since we don't, I think first when we say recommendations we might say the IMRC recommends that the Legislature adopt a statutory change to authorize annual Smog Check and address the social equity issues at the same time. The point number one would be, "Authorize BAR to implement an annual Smog Check inspection for older model year vehicles if low income owners are assured and aware of Consumer Assistance Program."

And number two provides BAR flexibility in identifying the appropriate model years vehicles.

Number three, we've heard the Committee say, well, we need enough money in there, but BAR has told us repeatedly that they have the mechanism for making budget transfers to CAP if it reaches its limit, so I don't think -- amount of money, yes, is important, but part of the point that Tyrone and I are trying to make here is that we don't know if the definitions of who qualifies and the way the qualification program works is getting the money to the people who need it to be able to sustain an additional hit on them of it being annual as opposed to biennial.

So number five, "Require that vehicles subject to annual inspection qualify for Consumer Assistance Program," et cetera, sort of assumes that the existing Consumer Assistance



Program, which you may have thrown together on the back of an envelope, Mr. Chairman, some years ago -

CHAIR WEISSER: Moi?

MEMBER LAMARE: - or somebody did, is adequate, so I would suggest that we say an annual inspection qualify for an equitable and fair Consumer Assistance Program.

CHAIR WEISSER: Could you read two and five again, please?

MEMBER LAMARE: Two I just took out the word 'some.' Provide BAR flexibility.

CHAIR WEISSER: Fine.

MEMBER LAMARE: Five, "Require that vehicles subject to the annual inspection qualify for an equitable and fair Consumer Assistance Program," or require that those subject have access, that the owners have available a fair and equitable program of assistance, that doesn't mean everybody qualifies.

CHAIR WEISSER: Thank you. And number one, how did you - could you do that one again?

MEMBER LAMARE: "Authorizes the Bureau to implement an annual Smog Check inspection for older model year vehicles if low income owners are assured of and aware of a Consumer Assistance Program." Something like that. Fishing for words here. Qualify, yes, we want this to be authorized, but we are mindful that low income vehicle owners need more protection if they - we need assurance that they will be protected if they are brought in for annual.

CHAIR WEISSER: Protected. They'd be assisted. I mean, I don't know what 'protected' means, it sounds pretty paternalistic, frankly.

MEMBER LAMARE: Will be -- yeah, I'm mixing concepts and words here, it's very rough.

CHAIR WEISSER: Well, I think I understand kind of the trend you're going in. It's ten to one. I think what I would like to do is take some testimony from the public on this issue, and then for us to actually do something we haven't done very often, and that is vote.

So, members of the public. We'll start with you, sir. On this particular item, if you please.

MR. RICE: Yes. Bud Rice, Quality Tune-up. I don't see any language in here addressing who would be making these inspections. I would hope that it would be the general testing pool where I could compete with test-only stations for these testing opportunities.

CHAIR WEISSER: Rocky?

MR. CARLISLE: Yeah, we intentionally left that open. We didn't direct them either to Gold Shield or to test-only, it was just the general Smog Check population.

MR. RICE: Thank you.

CHAIR WEISSER: John?

MEMBER HISSERICH: I remember at one juncture we did say Gold Shield and that met with some objection, so maybe that's why we left it out.

MR. CARLISLE: I think the objection really was that you're now another direction program, and it may be friendlier. They can certainly go to Gold Shield if they're going to CAP.

MEMBER HISSERICH: No, I understand. Maybe that's why we didn't at this juncture do what we initially thought that.

MR. CARLISLE: Exactly.

MEMBER HISSERICH: And received some objections.

CHAIR WEISSER: Okay. Chris?

MR. ERVINE: Chris Ervine with Coalition of State Test-and-Repair Stations. One thing I'd like to address right off is test-only has a very big advantage here. Many of these cars the previous year are going to have been directed to test-only. The owner of that vehicle is not even going to look at their DMV deal that says they have to get a Smog Check, they're just going to go to test-only because they were told to go there last year. They're trained. So that gives a big advantage to test-only. Test-and-repair industry has been hurt big time.

Another item. We keep talking about low income people and how much it's going to impact them. I like to feel that my \$6,000-a-year car payment is a huge contribution towards emission reductions in that I'm providing new technology with lower emissions than somebody driving an older vehicle. So I think that the consumer, even the ones that own new cars, have to be taken into consideration here, too. They're making a big contribution to the program.

The other thing is that the primary concern of this Committee, I feel, should be clean air. Everyone in this State has a responsibility. It's a privilege, not a right, to drive an automobile in this State, and you talk to any highway patrolman that's handing you a ticket and he will confirm that. The privilege should be that you will maintain your vehicle in a safe and non-polluting manner.

By going to annual testing, it could very well reduce the cost of emission repairs to the consumer in that we're going to catch problems early on and we're not going to end up damaging other components such as the catalytic converter, which brings us to another item here.

When the OBD II cars start hitting the CAP stations big time, \$500 isn't going to replace a catalytic converter. So the annual emissions could very well indeed reduce emission cost repairs in the long run.

CHAIR WEISSER: Thank you, Chris. Mr. Ward.

MR. WARD: Thank you, Mr. Chairman. Randy Ward, California Emissions Testing Industries Association. One thought on your editing. I would use the ARB in conjunction with the BAR with regard to your recommendations for political reasons. It's hard to think of an instance where the BAR might not do something that the Legislature didn't want them to do but the ARB has been somewhat notorious for doing that in the interest of the public and health, so I would use then synonymously. Just a thought.

I believe very strongly that this recommendation is an extremely important recommendation, so I share, Mr. Chairman and those of you on the Committee that do believe it's important, and I think there is a societal benefit and I question the issues that are raised, environmental issues that are raised when you have an overall societal issue here that is particularly strong as it deals with public health. So at least from that perspective I think the policy should be abundantly clear.

I'm not arguing with the mechanisms that you're discussing to implement the program that would be contingent upon availability of CAP and those kinds of things for which the group that would be obviously the most economically disadvantaged.

I would also recommend that these vehicles, so that you have an honest broker, go be directed to test-only stations. And while I certainly have an interest, I think that interest is legitimate if you look at the character of the program.

And furthermore, I have to disagree with the previous spokesman saying that this is unfair. The CAP stations are going to be repairing cars, and as he indicated, as the OBD II cars are more frequently repaired for emissions problems, the costs are going to go up, the income is going to go up to those stations that are doing those repairs, so that's clearly a benefit that the test-onlys don't have, so I would think once again in their interest of environmental justice for a fair and

honest test, that the test-onlys be required to test these vehicles that are subjected to the annual test. Thank you.

CHAIR WEISSER: Thank you, Mr. Ward. I think we need to take seriously the suggestion Mr. Ward made associated with BAR and ARB. I think that's a very constructive idea. The other suggestions Mr. Ward made we'll take under consideration.

Mr. Armstrong.

MR. ARMSTRONG: My name is Larry Armstrong. I find it interesting that the idea of waiting until cars are 15 years old before they get an annual inspection when the Bureau of Automotive Repair, I believe it was, or it might have been the ARB, produced information showing that vehicles at around 8 years started to spin up and be in need of repair. I suggested a long time ago that the past Committee think about doing a 3, 5, 7 and annual in years. Obviously, the Legislature and the Governor don't seem to think that we ought to test most of those cars.

This issue has already been brought up, but the higher income people that buy newer cars are the ones that are affecting the air in this state, and I find it hard to believe that we spend all of our time talking about the poor people that get to buy a \$30,000 car for \$2,000 after awhile, and somebody had to go out and buy that car initially for that person to be able to buy that car for \$2,000 somewhere down the road. We're worrying about the wrong people here if you want to affect the air.

The repair costs. I looked at that a little bit, and I may be wrong, but it would seem to me that if you repair a car in between a two-year period and there's an 80 percent chance that it's not going to need any repair the next time that the vehicle gets a Smog Check, that the cost is either close to half between the two different times. You can't have it both places. If the car gets repaired, it's repaired, so you'd want either at that time or the following time the cost needs to be adjusted.

Ms. Lamare used 40 percent as a failure rate for the next time around. I pointed out to the Committee that the last Committee had a presentation that said that 80 percent of the vehicles would pass the next smog test. Now, that's 100 percent away so somebody ought to be figuring out who's wrong, me and my memory or the 40 percent number that's thrown out.

If this Committee represents the population of this State, I'm very much surprised that there is not a very large socialist party in this state.

CHAIR WEISSER: Thank you, Mr. Armstrong.

MR. ARMSTRONG: Thank you.

CHAIR WEISSER: Len.

MR. TRIMLETT: Len Trimlett. First of all, it's not clearly stated though it's alluded to. Are you going to be trying to cut into the SB42 exemption with this 15-year rule? I'm going to needle you to the day this Committee disappears. Are you going to try and cut into that?

CHAIR WEISSER: No.

MR. TRIMLETT: That's on the record. Okay.

Are you going to be diverting those to test-only?

CHAIR WEISSER: That's not the intent of the Committee's recommendation as of now.

MR. TRIMLETT: Okay. That's another reason against it because if it diverts it away from test-and-repair, it again becomes how many cars – how much air pollution was reduced by test-only. None.

Also, I'd like to offer Rocky some acronyms for the glossary.

CHAIR WEISSER: Thank you.

MR. TRIMLETT: I still say how many vehicles were repaired, how much tonnage came from test-only. Zero.

CHAIR WEISSER: Thanks, Len.

Ms. Lamare, you have your microphone on?

MR. TRIMLETT: I'm trying to clarify what that quote was that was in the ARB/Bureau evaluation report. Unfortunately, I didn't bring the report with me so I can't read directly. Oh, great, could I look at that?

CHAIR WEISSER: Which quote are you talking about?

MEMBER LAMARE: The 40 percent number. So I'll find that.

CHAIR WEISSER: Okay. I also am struck by the opening remarks that Mr. Armstrong made regarding his notion of third, fifth, seventh and then an annual inspection, which quite frankly doesn't sound like a bad idea to me. I've felt that the



information that we're hearing from folks is that the durability of repairs is not what we would want it to be and you get a substantial number of failures within six months. I don't know what the percentage is and I don't want to throw numbers, but they're fairly significant.

So the notion of annual inspections on 15-year or older, to me, makes sense. I think it makes sense 8 year and older like Larry is suggesting, but we're not going to be able to go there right now. On this issue we're going to be dealing with what the BAR/CARB report recommends.

We have before us, I guess two alternatives before I release you for lunch that we're going to have to come to grips with. The two options are voting on a recommendation that fundamentally tracks what's in the working draft right now or voting on a recommendation that includes the, not that I'm biased or anything, the measured and thoughtful wording that has been developed by Member Lamare with the assistance of Tyrone and others.

In other words, to support the notion of going to an annual testing program but to implement that program with great consideration associated with the amount of money that's available for low income assistance in the CAP program, and the availability of or increased information to folks to make sure that all eligible low income folks get a shot at this money.

What I'm going to suggest is that we vote on the recommendation as put forward by Ms. Lamare as modified by

whatever else I just said, and then to modify the recommendation in the working draft to emphasize the fact that we're urging the Legislature to move into this program with all deliberate speed associated with ensuring that there's adequate funding and adequate outreach to low income people to make sure they're aware of this funding. So I'd like to ask the Committee's forbearance and I'm going to put this forward as a motion in this specific recommendation, that's what I move the Committee would adopt as a recommendation in this regard. Is there a second?

MEMBER DECOTA: So made.

CHAIR WEISSER: Second by DeCota. Is there any discussion on this issue? Gideon.

MEMBER KRACOV: Yeah, I'm just wondering in the context of Ms. Lamare's edits, are we making – and I think that the environmental justice issues are important and I don't think that they're outside the scope of this Committee's proper inquiry. Are we going to make it the intention that the 15-year and older testing program would be contingent on making sure that the CAP money is there or that it would just be emphasized that we would encourage the Legislature to put the money there? In other words, it be a very, very firm tethering that you didn't have one until you had the other; is that the intention of the motion?

CHAIR WEISSER: Jude, do you want to respond?

MEMBER LAMARE: Well, you made the motion, Dennis seconded it and I'm willing to go along with the majority of the Committee as long as we recognize the environmental justice (inaudible)

CHAIR WEISSER: I'm not sure 'contingent' is a stronger word than 'consider.'

Yes, Dennis?

MEMBER DECOTA: I believe this is a draft, okay? It's still going to be debated, it's not a final, and I think that's yet to come, Gideon.

CHAIR WEISSER: But you would suggest that in the wording of our proposed draft that we'd release that you'd want to see a strong linkage between the implementation of this program and the availability of the funding; that's the emphasis that I'm getting from what you've said.

MEMBER KRACOV: Well, I just want to be sure that the motion we're voting on, if that is what the motion is saying, just so the Committee has a sense of what it is that we're voting on. It certainly can be edited and we'll have another discussion in January.

CHAIR WEISSER: I just want to point out the fact that Mr. Carlisle is hanging himself in the corner right now.

Okay, you want a very strongly worded nexus between availability of funding and program implementation, and I as the maker of the proposal will kind of accept that as part and parcel of what I'm putting forward.

Bruce?

MEMBER HOTCHKISS: Yeah, I thought Gideon was just asking for clarification on it, not that you actually restate it whether you were making it contingent or tethered.

CHAIR WEISSER: I'm not sure I like the word 'contingent,' that's why I'm —

MEMBER HOTCHKISS: Yeah, then he changed it to 'tethered' or whether it was a strong encouragement, and I think there is a distinction there.

CHAIR WEISSER: John?

MEMBER HISSERICH: Well, basically I'm at the same point, the contingency, no, but the strong tethering, the nexus, sequential implementation or something along those lines, but I don't want it contingent.

CHAIR WEISSER: I do that is the type of issue that gets kind of hammered out in legislative hearings, but I think we can make our perspective pretty clear, and we'll have to real clearly go through another drafting exercise, and in fact we'll talk about this when we get back, I guess, but I don't know if we're going to be releasing a draft report until we go through one more cycle of edits, Rocky, to be honest with you. I'm not sure it's wise for us to do that. We'll have to talk about that as a group.

Okay, so there's a motion in regards to this that's been made and seconded. There's been discussion. All in favor of modifying this recommendation along the lines of the motion —

MEMBER HISSERICH: Are we adopting it as modified or are we voting to modify?

CHAIR WEISSER: We're adopting it as modified. All in favor of the motion to modify the recommendation so that it more clearly indicates the nexus associated with the implementation of this recommendation with the availability of low income assistance funds and an effective outreach program please signify by saying aye.

IN UNISON: Aye.

CHAIR WEISSER: Are there any opposed? Then that's the way we'll try to modify this recommendation.

Jude.

MEMBER LAMARE: To clarify the point that Larry Armstrong was asking about, I'm reading from page 41 of the ARB/BAR report that based on roadside data collected in 2001, 40.4 percent of the repaired vehicles failed the subsequent roadside test. This suggests that many of the failing vehicles did not get repaired properly or the repairs did not last, and that is the issue that I see that we are trying to address.

CHAIR WEISSER: Through an annual program.

MEMBER LAMARE: Through an annual.

CHAIR WEISSER: You bet. Okay. I have 1:08 on my clock. How about if we adjourn now and come back at 10 after 2:00, does that work for everybody, give us a full hour? Okay. See folks at 10 after 2:00.

**(Noon Recess)**

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### AFTERNOON SESSION

CHAIR WEISSER: Lynn, thanks a lot for getting the copies. Appreciate that.

MS. FORSYTH: We owe the copy center here a big thank you, they're the ones that got them.

CHAIR WEISSER: Buy them chocolates.

MS. FORSYTH: Okay.

CHAIR WEISSER: Chocolate will solve all the world's problems. Okay, the afternoon session will come to order, please. Considering the pace that we were able to speed through the first three recommendations, I'm confident we'll be able to continue and finish our review of this working draft by four. Maybe four tomorrow, but four. But we will, I think, actually be able to make greater progress.

The next item is the recommendation number four in the CARB/BAR report associated with the annual inspection for high mileage vehicles. The principle issue here to me appears to be the difficulty in getting your hands around high mileage vehicles, and in particular the two categories that would be most difficult would be the taxicabs and the high mileage vehicles that individuals own.

But we've tried to craft an analysis and a recommendation that takes that into account. With taxicabs, obviously you would have to have a program that would engage local government to do the regulation, mostly economic

regulation of taxicabs, you'd have to enlist their assistance along with the Department of Motor Vehicles.

Private individuals frankly post a much more difficult problem that I don't know what the best way to get those in, but there is little doubt in my mind and hopefully the minds of the members of the Committee that these vehicles tend to have emission control systems that will break down sooner than vehicles driven lower amounts and it would be good to get these vehicles in for inspections more frequently in order to correct any problems that arise.

So with that warmup, I would ask comments from the members of the Committee in terms of substance associated with the recommendation that's included in this portion of the report. Robert?

MEMBER PEARMAN: I guess I actually have a comment or a question and Rocky addressed this in part, but given the exception now for the first six years, this is one area that really additional weakens the viability of this recommendation, and I'm wondering if it's worth it to in any way suggest here that, since the statute SB1107 created an out, if you would, for BAR or ARB finding a certain class of vehicles that might be substantially likely to fail the inspection as a way to bring those back in year five and six, is it worth it to modify this to suggest that maybe this is a category where you need to look at cars earlier than the seventh year to make it really effective?



MR. CARLISLE: I think that's why, you know, in my mind we're really targeting fleets we could identify like taxicabs, maybe government fleets and that type of thing, because with SB1107 it does become impossible to identify a personally owned vehicle that's got high mileage, at least for the first seven years.

CHAIR WEISSER: But I think this is specifically aimed at trying to get at that segment of the newer model cars that are exempted starting 2005 under 1107.

MEMBER PEARMAN: So you read our recommendation as overriding?

CHAIR WEISSER: Well, what we're suggesting is legislation be passed that would -- pardon me, that BAR and CARB used the exception that's provided in 1107 in order to bring these high mileage vehicles back into the program; otherwise, they in fact would be excepted from the inspections.

MEMBER PEARMAN: I didn't see that as clearly in this recommendation, but okay, I see that in the issues part it mentions it in item four, but the recommendation didn't really fully tie those two together the way I read it.

CHAIR WEISSER: So we should probably then change the recommendation, modify it so that we specify the section of the code that allows BAR and CARB to draft back into the program these high mileage vehicles of newer model years. Thanks for raising that.

Mr. Williams.

MEMBER WILLIAMS: In previous drafts I've wanted to ask this question of the subcommittee about the recommendation two, "Identifies high mileage vehicles as vehicles traveling twice the mileage of the average passenger car." Is that overall cars or cars for that model year, because there's a presumably a big change there and it may be that we'll find that almost every car that's a new car is now going to be defined as a high mileage vehicle, and I don't think that's what we mean.

MR. CARLISLE: I don't believe there's any hard definition as of yet, but it was looking at anything over 25,000 miles.

CHAIR WEISSER: Maybe we should just specify the mileage rather than twice the average.

MR. CARLISLE: Okay.

CHAIR WEISSER: Does that meet with the Committee's approval? Is there any objection to that?

MEMBER HISSERICH: No, there's no objection, but just to be clear that would probably be over 50,000 miles a year?

CHAIR WEISSER: Is that right?

MR. CARLISLE: Twenty-five.

MEMBER HISSERICH: Wait a minute. The average vehicle is only 12.5? I thought the average vehicle was closer to 18.

MR. CARLISLE: Let me go back and look.

CHAIR WEISSER: I thought so, too.

MEMBER WILLIAMS: This is precisely the confusion I'm worrying about.

MEMBER HISSERICH: I was under the impression that it was closer to something like 17 or 18,000 a year was more an average, and so you'd be in the 35, 36, maybe even 40,000 to get into your high mileage category.

MEMBER WILLIAMS: It would seem to me that there needs to be an analysis of the mileage that everybody's doing by type of car, and I don't know that we've seen those numbers, so I wonder why we're recommending what the definition of high mileage is and that seems to me that BAR and ARB would plausibly come up with that definition.

CHAIR WEISSER: I will take that as a motion to kind of amend this recommendation so that it provides that we recommend that a definition be developed by BAR/CARB, adopted by the Legislature as what constitutes a high mileage vehicle, and we duck the issue that way.

Bruce?

MEMBER HOTCHKISS: I believe AAA puts out an average mileage figure. There are some corporations that do average mileage figures for fleets, so the data is out there as to what it would be.

CHAIR WEISSER: Yeah. Dennis, did you have something?

MEMBER DECOTA: Just as a point of discussion, when a car is leased from a dealership it usually is leased on a mileage basis. That lease is also usually handled – the DMV on that car is usually handled at that dealership, could simply be

identifying it as a high mileage vehicle if the lease is over X, whatever that determination is. That would be one way to start.

CHAIR WEISSER: On the privately owned vehicles.

MEMBER DECOTA: On the privately owned vehicles.

CHAIR WEISSER: I'm sure that there are other good ideas to capture bits and pieces of the privately owned vehicle segment of vehicle owners.

MEMBER LAMARE: The report does talk about the three percent of the vehicles that are over 25,000 miles per year.

CHAIR WEISSER: So they're using 25,000 miles a year as high mileage.

MR. CARLISLE: Yes.

CHAIR WEISSER: I still like the notion of punting the actual definition over to the agencies, but the notion of us endorsing an annual inspection for these higher mileage vehicles.

Jude?

MEMBER LAMARE: Does this Committee also endorse the recommendation to authorize districts to have optional district rules to do the same thing? I know it's not part of our recommendation but the issue has come up that air districts may also at their option, whether or not the State adopts, may want to engage in a high mileage Smog Check requirement.

CHAIR WEISSER: Well, I'd be hesitant to jump to a conclusion on that without additional thought and study, if only to prevent some sort of very patchwork kind of approach being

taken which would encourage even more people to misregister vehicles in areas they're not really domiciled in, so while that's an interesting issue, Jude, I don't think I'd suggest that I'd support us incorporating it, at least not at this point, but be very interested in working with the California Association of Air Pollution Control Offices to see if that's something they'd be interested in.

Any further discussion from members of the panel? So let's ask if there's any comment on this particular recommendation from anyone in the audience? We'll start with Chris and then Larry.

MR. ERVINE: Chris Ervine with Coalition of State Test-and-Repair Stations. The mileage on these vehicles, BAR has all this data available that will tell you when emission failures start to go up on a vehicle, and I suspect just from my experience in my own shop that you would start to see emission failures start to climb at somewhere around 100-110,000 miles. A lot of it depends on the vehicle and the type of driving. You take somebody that's a commuter and drives from here to the Bay Area every day and maintains their vehicle, they may not have an emission failure for 200,000 miles. You take somebody that's a taxicab driving around town, they may have an emission failure every 25-30,000 miles. So I think Bureau of Automotive Repair can provide you with an awful lot of data on this.

CHAIR WEISSER: Thank you. Mr. Armstrong. Hang on for a second. Jeffrey.

MEMBER WILLIAMS: Are you saying, then, that they should be the ones to make a definition of a high mileage vehicle, because they have the data, or we should do that because they can give us the data? I'm looking for an action point here.

MR. ERVINE: I feel that they can provide you with the data and based on that you can make a recommendation for the mileage that would be appropriate.

CHAIR WEISSER: Thank you. Mr. Armstrong.

MR. ARMSTRONG: Yes, my name is Larry Armstrong. I look at this recommendation like barking at the moon here because the infrastructure that would have to go into getting this done, unless you had something like had people sign under penalty of perjury on registrations, trying to go out and find these cars is kind of ridiculous. The one class of vehicles that I think in my lifetime I've been in one taxicab that ran right, so I would think that probably most taxicabs operate in the areas that you people seem to be concerned about where the high concentrations of people are and maybe some lower economic people.

If I was going to do it I would go and put the taxicabs on an annual deal. And the government fleets, they're going to go pound salt or they're going to do their own inspections anyhow that I think have to be annual, I'm not positive on that, but they're going to do their own inspections

anyhow, so they're going to do whatever they want, so trying to include them doesn't make a lot of sense.

The people that are involved in the transportation kind of stuff where most of the people that are running vehicles around that are high mileage vehicles are taking pretty good care of them because they know that they've got to depend on that high mileage vehicles.

And I think the reason the taxicab thing falls down is that most taxicabs are owned by one person and driven by somebody else and then multiple drivers, and so you end up to where nobody cares about what happens that vehicle, so I would say that would be the place to go attack to maybe get some benefit without offending a lot of people. It might even get the taxicabs running better and more economically so that taxicab companies in the long run would spend less money.

CHAIR WEISSER: Thank you, Mr. Armstrong. I think you're right, the individual car owners are going to be very difficult to bring in. I do think there are approaches to deal with taxicabs and with common carriers that are regulated by the Public Utilities Commission in a way that you can capture that portion of the fleet, and I also believe government will respond to requirements of this order. The individually owned high mileage vehicle is a much more difficult nut to crack, I agree with you.

Any other comments on this particular issue?

Hearing none, then what I believe what we are concluding is to move forward with this recommendation modifying the portion dealing with the definition of high mileage so that we request the Bureau of Automotive Repair to come up with a definition to present to the Legislature, and that would be about it. Is that an accurate capture from the group?

Then let's move on to the next item. The next item is the one dealing with the smoke test. This is an interesting one because -- item number six on page 17.

I missed one? Oh, darn. I'm just too efficient for you folks. What page? Oh. I have to admit I didn't read this one.

Rocky, why don't you go ahead with the background on this one.

MR. CARLISLE: The issue with this was one that had to do with increasing the amount of enforcement, and while we have a little bit of information regarding the enforcement at BAR, it occurred to me with the passage of SB1542 that requires the director of the Department of Consumer Affairs hire an enforcement monitor no later than January 1, and on page 17 I've listed some of the things that person has to report on, and the list is very large and much more comprehensive than what this Committee would be able to do, at least and get a report out on time, so it was my suggestion that maybe we defer this recommendation to that enforcement monitor since they do in fact have to give a formal report to the director, the secretary of



the agency and the Legislature, by the first report being due July 1st, 2005, and a final report due by December of 2006.

CHAIR WEISSER: Is this enforcement monitor really kind of an outgrowth of those hearings that took place?

MR. CARLISLE: The Sunset Review, yes.

CHAIR WEISSER: Mr. DeCota.

MEMBER DECOTA: The issue with regards to the enforcement monitor was presented by industry to the Sunset Review Committee was basically on getting an understanding how different enforcement actions were followed through, their procedural process and that type of thing. I'm confused to why it's here.

CHAIR WEISSER: I guess it's here because it was one of the recommendations in the BAR/CARB report.

MR. CARLISLE: Yeah, it was a recommendation to increase funding for enforcement.

CHAIR WEISSER: And our conclusion is basically let's just see what the monitor does and then we'll see if we want to do anything in the future, and the report from the monitor is due in six or eight months in July of 2005, a preliminary report, and then a final report in December. So I'm frankly not uncomfortable with the suggestion by Rocky that we punt on this. I wonder if we couldn't punt in a shorter item and see if we can't do some rigorous editing.

MR. CARLISLE: I didn't want to misrepresent the statute's requirements in here.

CHAIR WEISSER: Very good. Are there any other comments on this? Is there any comment from the audience? Mr. Armstrong. I'm sorry, Bruce, please.

MEMBER HOTCHKISS: I'm just wondering if they have to hire a monitor by January 1st, do we know what the status is of that? Are they in a selection process now?

MR. CARLISLE: As I understand it, they're going for a contract because this can be either a State employee or it can be a contract employee.

MEMBER DECOTA: Rocky, is your mike on?

CHAIR WEISSER: Okay. James?

MEMBER HOTCHKISS: Yeah, I see someone from BAR coming up.

MR. GOLDSTENE: James Goldstene, Deputy Chief, BAR. The bid for the enforcement monitor contract is out now and advertised and the bids are due December 10th, so it's being publicly bid.

MEMBER KRACOV: Mr. DeCota, are you going to apply for that?

CHAIR WEISSER: Gideon.

MEMBER KRACOV: I was just wondering because we have looked at some of the enforcement issues, Bruce and I did, and we had got some comments from Dennis, and I know we're going to try to speed on to the next item, but I was just wondering if you could give a quick sense for the Committee. Were you

pleased with this legislation and do you think this is a move in the right direction?

MEMBER DECOTA: Extremely pleased with the outcome of the Sunset Review Committee and this legislation. We honestly in industry believe that it will help us a lot to walk the line properly.

CHAIR WEISSER: And now at last – sorry, Mr. Armstrong. Robert?

MEMBER PEARMAN: Just a question. Later we make a funding recommendation and include talking about the repayment of the monies borrowed before. If that repayment is honored what can that money be used for and do we need to take some sort of stand if, for example, the Legislature would look at this and say, well, we're putting money back pursuant to your recommendation. Now we'll spend some of that for BAR's redesigned enforcement positions.

Do we need to take some sort of position in our other recommendation about the use of that or kind of lump it together or just ignore it? I'm not sure how to handle that because I'm not sure about the limitations, if any, on the use of those repayment funds we mention later on.

CHAIR WEISSER: That's a good question and I'm not sure I have a good answer. The one thing this Committee has endorsed is the use of this money for low income assistance in the repair program, scrappage. My suggestion is that we would, I suspect, want to duck that issue until the budget process

where the actual appropriation is determined as to where monies get used. I think the biggest hurdle will be actually getting the money back, and that will be a huge hurdle. Once the money is back, the battle over where it goes will be far more simple, in my opinion.

And at last, Mr. Armstrong. Thank you for being so patient.

MR. ARMSTRONG: Yes, my name is Larry Armstrong. I have asked the previous Committees and this Committee to look into the way that enforcement is handled. I've told you stories about individual business people being, in my opinion, abused by the way enforcement is handled and we seem to go after the wrong people. It's the small business person that is often the victim just like anybody else is, is put out of business and the person that was the perpetrator goes wandering off to something else.

I would just like to go on the record and say that I would have appreciated some help in that arena. It seems like the Committee has chosen to just totally disregard it and I feel bad about that and I feel bad for the people in the industry that are getting worked over by that kind of a system, and I also don't feel that the public is well served when you put people out of the competitive arena for basically no reason at all, so I wish I could thank you for all your assistance but that doesn't seem to be forthcoming. I certainly would appreciate it if you would put that on the agenda sometime.

It's important to the people that are providing service to the public and they're not getting help they need. Thank you.

CHAIR WEISSER: Thank you, Mr. Armstrong. I think that that issue in fact will be coming to us during when we hear the preliminary and final reports from the enforcement monitor. Thank you.

Any other comments from the audience?

Hearing none, let's move on to recommendation number six, associated with a smoke test component. I find this recommendation interesting because we are recommending that a subjective test be added to the menu in the Smog Check Program, a test that would rely upon the best judgment of a Smog Check technician as to whether a vehicle is excessively smoking.

I think the section as written is pretty self-explanatory. Rocky did find an interesting model in Novato upon which much of his data is based, and I think rightfully projects a higher number of failures due to the fact that California has never had the system, at least initially a higher number of failures.

Interestingly, apparently the Bureau of Automotive Repair feels that this is something that could be worked into the system. I'm particularly interested when we get to the public comment section to get reactions from the members of the public that are here now and encourage folks who aren't here when we release the draft report to give us an indication in writing as to whether they think this is a workable system. And

with that, I will open it up to members of the Committee for questions, and we'll start with Ms. Lamare first.

MEMBER LAMARE: Thank you, Mr. Chairman. I have noticed that the issue of smoking vehicles has come up repeatedly at the American Lung Association of Sacramento Immigrant Trails in their discussion in the Health Effects Task Force. Research conducted for the Committee has shown that smoking light duty vehicles are having as much of an impact as diesel vehicles on exposure of children at a school in Sacramento to roadway pollutants. Frankly, I was very shocked.

I don't know if anyone has sent in public comment on this issue or email? Nothing has come in, but it has come up in a number of discussions that I've been involved in the last couple of months that smoking vehicles are a serious health hazard and air pollution hazard, which leads me to believe that this would be a good addition to the Smog Check Program. The only issue is whether the test is one that people feel comfortable with.

CHAIR WEISSER: I think that's the issue I'd be most interested in hearing comments on from both the test-and-repair and test-only industry as well as any consumer representatives.

Mr. Pearman.

MEMBER PEARMAN: Just a question as to whether there is any way to, if not in the report, just ask Rocky to let us know about the cost-effectiveness of this as we've used it in other measures, even though it's only possibly an extra dollar or two,

is what we state. That's for every single inspection to catch maybe 200,000 cars at 1.6 tons of particulates a day, and I at least would like someone to say that, yes, that is 12,000 or 50,000 or 200,000 a ton just to make sure we keep comparing apples and apples on cost-effectiveness, even of something relatively minor like this, so to speak.

CHAIR WEISSER: Is that something that BAR and CARB looked at in coming up with their recommendation on a smoke test? Anyone from the agencies want to reply?

MR. PANSON: Andy Panson from ARB. We did not actually do a cost effectiveness calculation specifically for this measure. We look at this as essentially a mechanism to enforce an already existing provision in State law. Cars aren't allowed to be operated while smoking. There's been some comment that the enforcement of that can be sometimes lacking because it's up to CHP and they have many other things on their plate so they may not be doing an adequate job. We thought this would be a more effective way or an additional way to implement that.

CHAIR WEISSER: But the bottom line is you did not cost effectiveness analysis of this. I'm shocked.

MR. PANSON: Well, the other issue is, you know, we're very used to looking at cost effectiveness in terms of ROG and NOX, and this is a PM measure, and the emissions of PM on a gross tonnage level are substantially smaller than ROG and NOX. I'm sure we could do a cost effectiveness assessment, but I just warn you, when you look at cost effectiveness numbers for PM

strategies, you can't really compare them to ROG and NOX, so that's just a general warning on when you look at cost effectiveness.

CHAIR WEISSER: That's very true and I think that's well stated, Andy, the orders of magnitude of costs are completely different.

Well, there's your answer.

Jeffrey? Dennis, it's your turn.

MEMBER DECOTA: Why don't we identify diesel and trucks in the recommendation, or is the particulate matter more severe?

CHAIR WEISSER: I don't believe that diesels are part of the Smog Check Program. I will say and compliment both ARB and the California Air Quality Control Districts who are making diesel particulates a number one target for cost-effective emission reduction strategies.

MEMBER DECOTA: Mr. Chairman, diesel is in the Smog Check Program. As of new model years you have to take and perform Smog Check on diesel motors. All right. My son has a new Ford diesel and he has to get a Smog Check, and it's got a catalytic converter on it.

All I'm asking is, if that be the case, because of worn injectors, diesel burning trucks and buses are far more offensive polluters. I mean, why don't we go beyond this a little bit and look at the real issues as it relates to this type of thing? I don't know, just discussion.



CHAIR WEISSER: Thank you. I was not aware that diesels were part of the Smog Check Program and I see our executive officer is also shaking his head in a puzzled fashion.

As to trucks, heavy duty trucks and buses, my comment stands. I think the State has a very aggressive program to try to clean up that fleet through retrofits and scrappage, and I think we have every right to expect really substantial progress in that regard.

Andy, did you have something you wanted to add?

MR. PANSON: Yes. Andy Panson with ARB. I did want to add that we, ARB does currently operate a heavy duty vehicle inspection program which does roadside inspections specifically for excessive smoke from diesel trucks, so there is already a program that is being implemented, it's just not done under the auspices of BAR or within the Smog Check Program, but we are already testing for smoking diesel trucks.

CHAIR WEISSER: I remember quite an outcry from the trucking industry over the so-called snap idle test, and ARB, I believe, actually uses some sort of opacity meter. I'm unsure as to why that wouldn't work for Smog Check stations other than the cost might be unnecessarily high and you could do it more simply through a visual inspection.

MR. PANSON: Yes, I think that's a large part of it. Gasoline vehicles just inherently there should be no smoke coming out of a gasoline vehicle. The test for the diesel vehicles is a little more complicated because according to the

statute you're allowed a certain amount of opacity. You fail at a Ringleman number something-or-other, so it's not a matter of just yes or no, there is smoke or there isn't; there's some amount of barely visible exhaust coming out of a diesel vehicle and therefore you actually need a more complicated test where you can say, yes, it's above or below the threshold, where for gasoline vehicles it really is simply a matter of there should be no smoke, and if there's any smoke, that should be a failure.

CHAIR WEISSER: Thank you. Jeffrey?

MEMBER WILLIAMS: That's a perfect lead-in to my question, which is concerned with the wording of our recommendation calling it subjective. It seems to me it's visual rather than subjective. If you can see it, it shouldn't be there, and so —

CHAIR WEISSER: I'm so much more comfortable with using the word 'visual' than 'subjective.'

MEMBER WILLIAMS: Yes.

CHAIR WEISSER: Is there an objection to just the substitution of the word 'visual'?

MEMBER DECOTA: The community does realize that every car below 30 degrees when you start it, they're going to smoke. It's not an emission problem, it's just the normal warm-up process.

MEMBER WILLIAMS: That's vapor, it's not smoke.

MEMBER DECOTA: No, I just want you to know that.

MEMBER WILLIAMS: Yes.

MEMBER DECOTA: Okay.

CHAIR WEISSER: But if a car is properly conditioned, that won't be a problem.

MEMBER WILLIAMS: Oh, yeah, I understand that, but ultimately we're not saying a subjective test by the magnitude of the bribe or something like that, but we're talking about –

CHAIR WEISSER: For the record, that was not the chair.

MEMBER WILLIAMS: – a visual test, and there are already visual tests as part of the Smog Check.

CHAIR WEISSER: Very good. Jeffrey, I think that's a frankly a very good – I've been bothered by the word 'subjective.' I've put it in quotes, I've come up with other words, but you hit it right on the head.

Is there anyone else on the Committee that has a comment? Seeing none, we will open it up for comments from the public on this item. Is there anyone from the public that has anything they'd want to add? Mr. Armstrong.

MR. ARMSTRONG: Yes, my name is Larry Armstrong. First off, I believe the word 'subjective' was probably a lot better in there. You could put 'visual' with it if you wanted, but it's going to be a subjective test where you need to have somebody be the person that says yea or nay, which apparently they're talking about having at the referee. If it was just a slam dunk they wouldn't be talking about having somebody else interfere with it.

The problem with – and by the way, I'm in favor of having some sort of a smoke determination at a Smog Check, but somehow you're going to have to protect the person that fails the vehicle, because if you leave it open so that the customer can just go down the street to another place and have another Smog Check, some other person's subjective determination is going to pass the test and then you've got complaints filed against the guy that was actually trying to do the job properly, so the thing's going to end up backwards if you're not really careful.

CHAIR WEISSER: Do you have some specific suggestion in that regard, Larry?

MR. ARMSTRONG: Yes. And as much as I don't like saying it, it probably ought to be that if one station fails a vehicle for potential smoking, that that vehicle ought to be locked out of any certificate until it gets a pass from the BAR or somebody like that so that you just don't set up a shopping tour. If you set the clock back for an hour or so I could give you lots of stories on how smog techs have been criticized for doing their job because a customer complained and then the thing comes around and it ends up coming around, as I say, backwards from what I'm sure you folks would think the person that ought to get supported in there.

CHAIR WEISSER: Thank you.

MR. ARMSTRONG: So you need to have some kind of a program like that. There ought to be a system in there that

would allow the Smog Check station to perform the complete test and get paid for it, because otherwise you're going to end up with the customer at the end just going off to somewhere else and the guy that failed the car wouldn't get any pay for what he did and yet he did the work and will probably potentially take the abuse, so you got to put some thought into that.

CHAIR WEISSER: Does the Committee think we need to address the issues that Larry raised in our recommendations or leave that up to the BAR and CARB in the development of the detailed implementation?

MR. CARLISLE: If I may, Mr. Chairman, I would leave that up to the implementation because right now if a vehicle fails for a visual inspection for any other device, missing, modified or disconnected, they can do the same thing, shop for pass.

CHAIR WEISSER: They can go to another station. Thank you. Okay. Jude?

MEMBER LAMARE: Larry mentioned something about a referee, which brings up that in our discussion of these four recommendations we only talked about the first two, and the second two recommendations refer to the referee. The second two recommendations refer to the case in which someone has got a ticket for a smoking vehicle and has had to go to a referee.

So, recommendations one and two have to do with one set of circumstances, and three and four have to do with another set of circumstances.

CHAIR WEISSER: Right. So we —

MEMBER LAMARE: And I think the Committee members have endorsed all four as we haven't addressed any problems there. It seemed like Mr. Armstrong was, because he just got this report, probably not aware that we're talking about two different smoke inspections, and in the first case there's no referee involved.

CHAIR WEISSER: No, in fact, I believe that there is a referee involved in both cases, Jude. That if there's a failure based on smoke at a test-and-repair or test-only station, that the owner of the vehicle has the right to dispute that and go to a referee to adjudicate whether or not indeed the vehicle is smoking. Is that not the intent of this?

MR. CARLISLE: That was the intent because they have that right right now.

CHAIR WEISSER: So what I would suggest that what we need to do is reorder these so that the first one deals with smog checks through the Smog Check Program, the second one deals with the referees for that, the third deals with vehicles that are cited and the fourth deals with the referees in relationship to that.

MR. CARLISLE: Okay.

CHAIR WEISSER: All right. I think Mr. Armstrong's comments which deal with the first set, the Smog Check inspection station problem, are something that in fact the agencies, in particular BAR, need to think through. I'm not

sure, frankly, of the practicality of banning a consumer from going to another – shopping around. As Rocky suggested, they could already do that with tampering and things like that, but it's a thoughtful suggestion.

MEMBER LAMARE: You're saying that three applies in the case where a Smog Check technician has found that the car fails a smoke inspection and therefore they have to go to a referee to clear it, that's equivalent to a 27153 (inaudible)?

CHAIR WEISSER: No, and I mis-spoke, Jude. I think what we need to do is have an item on the role of the referee in a dispute between a Smog Check station and the consumer, have a separate item on that, it might be number three.

MR. CARLISLE: That already exists. That's one of the functions of the referee. If there's a dispute for any kind of Smog Check between the consumer and the Smog Check station, they can call BAR and set up a referee appointment. I mean, we could include that in there.

CHAIR WEISSER: I think we ought to include it in and just repeat it.

MR. CARLISLE: Okay.

CHAIR WEISSER: Good catch, Jude.

Mr. Pearman? Okay. It's hard for me to tell who wants to chat. Anybody else up here? Okay. Open it up for any additional comments from the audience? Okay.

We'll now move on to the recommendation number seven, which should engender some interesting dialog. This

subcommittee, composed of brilliant leaders of the IMRC, came forward with a recommendation that challenges the recent extension of change of ownership from two to four years. Well, it exempts all four years and newer. The analysis attempts to describe some of the concerns, particularly consumer protection concerns that that new legislative provision generates. It also attempts to try to balance those concerns with the protections that might be provided through the on-board diagnostic systems of newer cars, in particular, the MIL light, and then proceeds to debunk that protection because you can tamper with the MIL light in a variety of very, very easy ways.

The report goes through a technical analysis that, frankly, Rocky developed that indicates the nature of the failures, the percentage of the failures that could be anticipated, and tries to put forward some of the cost implications of those failures, and then attempts to come forward with a balanced approach toward dealing with the issue of cost effectiveness in terms of inspections on change of ownership versus consumer protection, and the recommendation is basically to roll back the exemption in change of ownership to three years or newer. Hopefully that would catch the vast majority of cars still under warranty and it would still provide a much higher degree of protection to consumers who are purchasing used vehicles from unscrupulous individuals or dealers.

I open the floor up. Mr. Carlisle.



MR. CARLISLE: One thing I wanted to point out. Andy Panson with ARB had a concern about the chart on page 23, and rightly so. Their analysis was done on two-year and newer model year vehicles and my chart reflects the fail rate on four-year and newer model year vehicles, but the point of the chart really was not so much to pick out the model year but to show you that the increase in fail rates as the readiness threshold was decreased from five down to the eventual two that it was set to, I believe it was the first part of this year, and as you can see on that figure 1 that it starts relatively low, but as you go from readiness threshold to four, to three and then finally two, there was a significant change.

And of course, when OBD II went statewide there was another significant increase because a lot of those vehicles had never been checked for OBD II as well, so I didn't want to misrepresent that chart in any way, but it was still a fail rate.

The other issue is some of these vehicles fail simply for not ready, which you could certainly argue that it wasn't really an emissions failure, they just weren't ready to be tested. The problem is the data does not dictate which vehicles those were or what percentage that was.

CHAIR WEISSER: Well, maybe you can back up a little bit, Rocky, and start first with a little explanation of the issue associated with two years versus what the chart shows. I

don't quite understand what you were saying on that. What's wrong the dataset that you've compiled here?

MR. CARLISLE: Well, the dataset shows that, you know, I went up to four model years. The BAR analysis was only two.

CHAIR WEISSER: The BAR analysis in their report?

MR. CARLISLE: Yes.

CHAIR WEISSER: Well, I don't care about that. This chart is accurate, isn't it?

MR. CARLISLE: Yes, yes.

CHAIR WEISSER: Okay. Why should I care about that? Is there a reason, Andy?

MR. CARLISLE: I didn't want to misrepresent their —

MEMBER DECOTA: From the standpoint of comparing and reporting on the recommendations of ARB.

MR. PANSON: Andy Panson, ARB. My concern has been addressed by the way the report was re-worded. Rocky had shared an earlier draft with me and it implied that the data in our report was incorrect, and I of course took exception to that. And now the way that Rocky has characterized it, the issue has been addressed.

CHAIR WEISSER: Thank you very much. Now I am a little more concerned over the implications of the not ready light on the actual failure rate because an awful lot of your analysis is based upon the costs to the consumers of missing a real failure, and some portion of those — well, how do you

discount that in terms of your benefits of reinstating this program?

MR. CARLISLE: At this point I don't know that you have the data to do that, because BAR doesn't separate not ready from an OBD II failure.

CHAIR WEISSER: Why?

MR. CARLISLE: It's just not accounted for on the vehicle information database.

CHAIR WEISSER: Why?

MR. CARLISLE: I don't know that there was a need to at that time. I can't answer for the Bureau of Automotive Repair.

CHAIR WEISSER: Thank you. Mr. DeCota.

MEMBER DECOTA: Rocky, as regards to the ARB chart versus your chart, is there ready issue the same in both charts?

MR. CARLISLE: No, I think they're the same, especially when you have —

MEMBER DECOTA: That answer then would be yes, they're the same.

MR. CARLISLE: They're the same for the two model years before you introduce the threshold when it was decreased.

MEMBER DECOTA: Are we comparing apples to apples with the exception of a two-year increase in information?

MR. CARLISLE: No, because they didn't take into account the threshold being decreased. They used the 2002 data,

if you recall, okay? The threshold was not decreased until the following year.

MEMBER DECOTA: Okay, thank you.

MR. CARLISLE: That's why their analysis didn't reflect that.

CHAIR WEISSER: So what you're suggesting is that their analysis still likely underrepresented the number of failures that would occur under the new lower threshold of the number of elements of the test that are allowed to be.

MR. CARLISLE: Yes.

MR. PANSON: Andy Panson. I don't disagree with that because I haven't looked at the data. It's just that we were comparing apples to oranges, which you know, we just cut the data. We looked at data from different time periods, and so I didn't want the fact that they disagreed to be taken as our data is not right.

CHAIR WEISSER: Well, it makes some sense that if you reduce the number of failures that you're allowed to have and still pass a Smog Check test, you're really liable to fail more often.

We'll start from the right to the left. Gideon.

MEMBER KRACOV: Was this an issue that either the ARB/BAR report or we probably could take a stab at trying to quantify the emission reductions through this recommendation, or that hasn't been done with this one?

MR. CARLISLE: I don't believe that's been done with this one, I'd have to go back and look.

CHAIR WEISSER: I don't remember.

MEMBER KRACOV: I think Dennis brought that up earlier today, and I think especially if we're going to do a cover letter from Vic. I know it may be impossible for some of these recommendations to do that, but to the extent that the information is already there from an earlier report where we could cobble something together that is a good faith estimate, I think that really would give us some more bang for the buck in terms of presenting these as way to get towards our SIP numbers.

MR. CARLISLE: I think the cost effectiveness would still be high on this segment of the fleet. The problem is, we were looking as a consumer protection issue as much as emission reduction.

CHAIR WEISSER: I think that's the key point. I think the second point is that because the IMRC's budget for external consultants was constrained, and by constrained I mean eliminated, we really don't have the resources to independently generate that data. We're hopeful that in future months that will change, but hopeful is different than confident.

MEMBER KRACOV: Yeah, I don't know if I mis-spoke, I mean whether it's reductions or potential increases because of the consumer values of it, but I think —

CHAIR WEISSER: I think the key thing here, though, is what we're trying to do is raise a red flag to the Legislature

who may not have given consideration to the consumer impacts of this measure, which I think, based upon the percentages, you're talking five percent failures, could be substantial to the unsuspecting used car buyer.

Jude.

MEMBER LAMARE: Just to summarize. As I saw this, the original report only dealt with the first two years and recommended exemption on change of ownership for the first two years. SB1107 extended that to four years, but there was no substantiation for that extension in the ARB/BAR report of April, 2004.

CHAIR WEISSER: That's correct.

MEMBER LAMARE: So we are doing our job by looking at some of the implications here in our report and saying, well, we think you should step back to three years, and that is better for the consumer and will get better emission reductions. Am I reading this correctly?

CHAIR WEISSER: I think that's right on target. And I have to say my instincts are to err on the side of consumer protection. I mean, I actually might feel more comfortable at two years because I do believe the warranties are both time and mileage and if cars are traveling 15, 16, 17,000 miles a year, I think by the third year you're going to have some percentage of cars that are out of warranty, and I'm not thrilled with that, but we're trying to make a reasoned approach here and that's what.

MEMBER LAMARE: Well, given that SB1107 as I recall did not go through a policy committee for public hearing, then we're helping get this issue back in the public forum.

CHAIR WEISSER: That's correct, and I would suggest that if legislation is introduced to deal with this issue, that during that hearing process more exploration would be done regarding whether we should go back to two years versus three. If I had any leanings it would be to cut this exemption shorter, not to extend it. That's my personal belief.

Jeffrey?

MEMBER WILLIAMS: I'm not sure I disagree with the recommendation, but I'm worried about some of the reasoning in here about it being a consumer protection measure, in the simple sense that people can choose to ask a seller for a Smog Check. Maybe they don't. Maybe they're naive about the car they're buying, but they could do that, and we're recommending that it be mandatory. Now, maybe there's no way to do this other than mandatory, but I'd like to have an estimate here of how many wouldn't do it on their own. Maybe zero.

CHAIR WEISSER: Mr. Pearman?

MEMBER PEARMAN: On that same line, as Rocky mentioned, this was as much a consumer protection driven recommendation as an emissions control, and I guess I have a philosophical question if not an objection as to whether we're best suited to make that kind of determination and should make a recommendation with that as the driving force.

I mean, there's all kinds of seller fraud that could occur in transferring a car from how many miles it has to when was the last time you repaired the brakes, so are we really in the best position to state that this particular type of fraud has to be handled through the Smog Check Program as opposed to other means that society has to enforce seller honesty in the transfer of cars?

So it's just a philosophical question I at least want to ask as to whether this is appropriate to really base the recommendation on that feature that's not really our primary objective and I'm certainly not equipped enough to say that this is the best way to get at it versus some other way that society attacks fraud and transfers of cars.

CHAIR WEISSER: Mr. DeCota?

MEMBER DECOTA: I think the issue here is very much related to emissions. You have a situation that exists today that by simply disconnecting the battery cable you can reset the code in the computer and the consumer would not know there was a emission problem with that vehicle.

In other words, the MIL light could be on by disconnecting and reconnecting the battery, just that simple, takes all of two minutes, you could actually create a situation where that consumer would not be aware of either a missing, modified or – today it's certainly not uncommon that some of the younger folks buy aftermarket chips and install them into their



computerized vehicles in order to enhance the performance, at least in their mind enhance the performance of that vehicle.

How would the average consumer – right now it is required by law on change of ownership and they are somewhat protected – how would they be protected on a Lexus that under resale after three years is high \$30,000 if this car was in a mechanical condition sufficient with the State and then go find out after purchasing it that the car might need a \$1200 catalytic converter? And you're talking a lot more vehicles than you think.

Well, the reason that I agree with Vic, the two-year would be my preference, but in discussing it with Rocky in depth over the weekend, you know, all vehicles carry a 3-year/36,000 mile warranty, and we felt that that was the best way to approach that. Even though that some will fall through the cracks, it'll narrow that quite a bit.

So that is the basic drive in it is the consumer pays a ton of money in the resale price of that car for that car's emission system as it was intended to operate from the factory, should have the ability to know whether that car is within compliance at the time of purchase or will suffer a great deal of expense, and that may not be picked up on a simple Smog Check if it's done within a quick time even if he does demand it, how many consumers are going to demand that they get a Smog Check? Probably the more informed, but a lot of the inspirational

buyers that are out buying a car over the weekend and that type of thing may not consider that situation.

CHAIR WEISSER: Any other comments from members?  
Andy, did you have something you wanted to add?

MR. PANSON: Yes. Andy Panson, ARB. I did want to make one comment relating to the warranty situation for cars. You're right, there is a 3-year/36,000 bumper-to-bumper warranty. There is also an additional emission control system warranty for higher priced repairs, and that's 7-year/70,000 miles, and the threshold is, I think it's 350 or 400, I can't remember what the exact dollar figure is, so this situation where after three years you might need to replace a catalyst at \$1,000 or \$1200, that is something that should be covered under a warranty.

CHAIR WEISSER: Is that covered if the car has been subject to tampering?

MR. PANSON: No. Tampering -

CHAIR WEISSER: And would a motorist who is buying a car whose MIL light had been tampered with know whether or not there was tampering unless they had a Smog Check?

MR. PANSON: Right. And I'm not the best person to speak about the details of OBD, but I did want to repeat at least a summary of something that Tom Cackette said at one of the previous meetings, that this notion of you can reset your MIL light by disconnecting the battery and then reconnecting it. By far, the majority of failure codes, the next time you start

the car it's going to go and do all its diagnostics, and almost all of those failures would be caught at that initial start-up diagnostic. Tom did list one or two or several that wouldn't, but by far the majority would. I don't know if you remember that.

CHAIR WEISSER: Yeah, I think there was something. I'm making this up, but I think there's something like five, six or seven tests that are run under, you know, the car has to achieve certain operating conditions.

MR. PANSON: Right. And those would show up the next day or two days or -

CHAIR WEISSER: Whenever someone's gone through the cycle.

MR. PANSON: Yes, but it's not, you know, OBD is a little more sophisticated than you can just trick it by disconnecting the battery. You could trick it momentarily you can turn that code off, but it is going to reset most of the codes the next time you start the car.

CHAIR WEISSER: Right. And of course, if you broke the lamp on the MIL light, the buyer of course would never see that red light on, right? Thank you.

Okay. Other comments?

Well, this is, I think, some interesting and frankly good issues have been raised. In particular, you know, IMRC is not a consumer protection organization. Our function and focus has been on emission reductions, and yet as you saw

earlier in the discussion we had regarding low income assistance, the line is not quite so clear and in fact we do have a responsibility that does, you know, engage us in issues associated with consumer protection and consumer assistance.

I'm not embarrassed for us to comment on the CARB/BAR report recommendation such as we've done here. I think this recommendation is a good recommendation. If anything, as I said, I'd cut it back to two years and not three years. Two years as recommended in the BAR/CARB report.

Any further comments from any Committee members? Let's ask for any comments from the audience and we'll start with Chris.

MR. ERVINE: Chris Ervine, Coalition of State Test-and-Repair Stations. The gentleman from ARB made a statement that you can clear the codes, but they'll come back right away as soon as you start the vehicle. I think that's an oversimplification.

Some tests are run immediately and some failures that occur will set a check engine light on the first test. Others have to fail two or three consecutive drive cycles, and a drive cycle may not occur for a long period of time, depending on the particular parameters that are set in order to create that, so it's conceivable that you could have a failure that somebody went in and cleared and would not show up for a month depending on the individual's driving habits.

We see an awful lot of vehicles that come in, they've failed someplace, they come to us and the check engine light is out but they will not pass because they have not run all the monitors, and so the individual consumer can get taken there.

The thing about the Smog Check Program is that it does check for monitors to be run, and if the monitor has not been run, then they have to either get the monitors run or we have to find out if there are any codes pending that may eventually set a check engine light.

CHAIR WEISSER: Thank you, Chris. Mr. Armstrong.

MR. ARMSTRONG: Yes, my name is Larry Armstrong. Probably of all of the things that you've talked about here today this one is the most important and you haven't talked about, as I see it, the problems that go along with it. The questions of how you sabotage the car and not sabotage the car and all of those things are really inconsequential and what it needs to be is, if the ownership is changing and the responsibility for that vehicle is changing, there needs to be a step in time that assures that that car is okay, and you folks and the Legislature have agreed to let that not happen, and so what you're doing is destroying the integrity of the whole Smog Check Program and it's the whole program becomes not viable if you let this go through, so your recommendation should be to maintain the old way so that a vehicle under change of ownership at any time gets a Smog Check inspection and all of the time that it's required to be under the program. I fail to see why

nobody gets it. That's the most important thing that you've talked about. It destroys the program right there and makes it so that the whole thing doesn't make any sense.

The MIL light question, all you have to do is talk around to your friends and neighbors and you'll find that people that have called the dealer, they ask about the MIL light and what they're going to get told is that, well, it's probably you didn't tighten the gascap and if you come in and we check the car we're going to charge you for an hour worth of time and if that's the problem and we don't find any fault codes, then you're going to pay for the time, and most people shy away and they don't go back and get it checked, so a lot of people are driving around with lights on and there's going to be a lot more if you let this happen.

You've got a responsibility here to go back to the Legislature, you're supposed to make recommendations and go back to the Legislature and recommend that they require change of ownership Smog Check just for the purposes of assigning who needs to be responsible for the vehicle, it's that simple.

CHAIR WEISSER: Thank you, Mr. Armstrong. Mr. Ward.

Robert, did you have a comment or a question?

MEMBER PEARMAN: Well, just one more stab at this. Did the Committee look at anything less than a full Smog Check inspection? If the really guts of this recommendation is this OBD II tampering, is there a cheaper alternative test, if you

will, that would still save the consumer money but yet get at this particular fraud issue?

CHAIR WEISSER: Mr. Carlisle.

MR. CARLISLE: Yes, we looked at an OBD II only test, and Tom Cackette brought up a good point, you know. If you introduce an OBD II only test, you're introducing a test that's going to be only done on one or two model years of vehicles, and that's extremely expensive to introduce for that small segment of the fleet, so it would be cost prohibitive if that were the case.

CHAIR WEISSER: Could you explain that a little further? I mean, isn't an OBD II test the technician plugging in -

MR. CARLISLE: It is a component of Smog Check, yes, but the problem is they would have to go back to the manufacturer, the equipment manufacturer for the emissions analyzers, and have them reprogram an OBD only test instead of it being a component of the entire Smog Check test, unless you do another, I don't want to call it a subjective test but I'll have to call it a subjective test because you could hook up a scan tool and accomplish the same thing, it's just a hand-held diagnostic device, but then it wouldn't be automated and it wouldn't be reported to the Bureau of Automotive Repair. It's such a small segment of the fleet that was the issue.

CHAIR WEISSER: Robert?

MEMBER PEARMAN: But is that the same thing as the test required to make sure there's been no tampering with the OBD II system?

MR. CARLISLE: Yes.

MEMBER PEARMAN: Really?

MR. CARLISLE: Yes.

MEMBER PEARMAN: Okay.

CHAIR WEISSER: Mr. Ward.

MR. WARD: Thank you, Mr. Chairman. Randy Ward, California Emissions Testing Industries Association. Ms. Lamare's comments about the lack of any public hearing on the exemptions from change of ownership reminded me of my surgery, civil war surgery, and I'm sure Dennis's too, that we still haven't recovered from.

But a comment overall, and I don't know if Rocky's addressed this, I hadn't seen it on the recommendations, but some of these can be implemented by administrative action as opposed to legislative action, and I may be recalling incorrectly, but I believe SB1107 gave the Air Board some wiggle room based on a quantification of emissions and the kinds of things that were necessary to maintain the State Implementation Plan.

Anyway, just a comment, and I would suggest that your report reflect —

CHAIR WEISSER: In fact, Randy, I think the report does identify that wiggle room, but I don't know if the



recommendations, all of them say pursuant to the provision of 1107 that allows CARB to do this or that, and I know we have it in some but I don't think we have it in all.

MR. WARD: Precisely. Thank you.

CHAIR WEISSER: So we'll try to do that through the editing process. Thank you. Are there any further comments from the public? Any further comments or last thoughts from members of the Committee on this item? Then we'll move forward as it's structured.

The next issue relates to, I think it's the budget, right? Yeah. The bottom line of this issue is that in the absence of any sort of funding to an independent audit per se, what we did is have a series of discussions with both BAR management and BAR administrative staff, Department of Consumer Affairs, I actually spoke with the Department of Finance, to see whether or not the overhead charges that the various BAR accounts were being assessed were reasonable and in fact based on guidelines, to track the flow of money coming into the program through various fees, licenses and penalties were being applied to the program or were being somehow shunted aside, and to make sure that the monies that were somehow being shunted aside were being done so in a legal fashion, and to identify the mechanism for tracking those monies and to see the mechanism for how they get eventually repaid, and if they get repaid, get repaid with interest.

The discussion of the report indicates that we found in this frankly cursory review nothing to indicate that there was any funny business going on in terms of BAR being treated as a cash cow by either the Department of Consumer Affairs or the State and Consumer Services Agency. The overhead charges that they pay for everything from soup to computers are consistent with that which is charged to other aspects of the various bureaus and commissions that fall in DCA. Their overhead charges for space and for everything else just seemed to be normal. I found nothing that raised my eyebrows and I do have some experience in this from my past history in State government. That's not to say there couldn't be funny business going on, but if there is, it's being done at a second or third level that I had neither the time nor inclination to pursue.

The one area that I think is of great interest to the Committee has to do, however, with the funds that have been legally borrowed from the two accounts within the Bureau of Automotive Repair's budget for assisting the State in coping with its budget difficulties in the past few years.

Rocky and I and Paul found, I guess about \$114 million of funds have been borrowed. These funds are being tracked. They are accruing interest at the same rate as the State-pooled investment fund, which is the normal rate that you get back when you loan money to the General Fund.

The interesting issue for this Committee and I think ultimately for the Legislature has to do with how these funds

get repaid, because the statute, according to Rocky's research, is unclear in certain definitions. It indicates that the funds get repaid when there is a need. Need is not particularly well defined. Need pretty obviously would include a budget shortfall, but is need also characterized as including program expansion, for instance, expanding the amount of monies available for low income assistance or scrappage or who knows what.

Additionally, the process for requesting a need is one that requires, I believe, the Department or the Bureau to go through the Department to go through the agency to go through the Department of Finance to go to the Legislature essentially. Do they have to go to the Legislature? Is the Joint Legislative Budget Committee the one that decides? So it's the Department of Finance, not the Legislature. None of those agencies are going to be in a real hurry to rush and repay this loan.

What's being proposed here, however, is that in fact the request be made that these funds do be repaid because of what we anticipate to be higher demands on the low income assistance program and the scrappage program. To ameliorate the impacts on the State's overall budget picture, we suggest that the funds be repaid over a five-year period. And I think that's about where I'll stop.

This is not a recommendation that is going to be greeted with glee by our masters either in the Administration or the Legislature. I just think they're not going to be thrilled

that we're saying it's time to pay the money back, but it's one I think that reasonably we should and could make and I think we should make.

The only portion of this discussion that leaves me a bit uncomfortable, Rocky, and I haven't raised this to you before, is the discussion associated with the IMRC not having resources to do its job. I think it sounds a little bit like whining to include that in an issue dealing with the overall BAR budget and flow of money. I think in a cover letter that describes briefly to the reader the scope of our investigation for this report and what we didn't look at and why we didn't look at stuff, that's where a comment associated with the grievous elimination of IMRC funding should be raised, but not I think in this section of the report. That's my leaning.

With that, I once again will attempt to shut up for more than 30 seconds and ask members of the Committee to raise questions or give us comments or suggestions regarding this portion, and I see Mr. Pearman's microphone is up but he's (inaudible). Guys, there's got to be a problem with this one. No? No? Okay. This is the one we'll probably get the most flack on. Thank you, Jeffrey.

MEMBER WILLIAMS: Well, I agree with you to take point five out.

CHAIR WEISSER: Okay. Without any further comments from the members I'm open for comments from the public. Anybody

in the audience care to comment on this item? I'm stunned. No comments, really?

MEMBER PEARMAN: I have one.

CHAIR WEISSER: Thank you, Bob.

MEMBER PEARMAN: Well, Jeffrey just said he agreed with you to take point five out, and I didn't think you wanted to take that bullet point out, I thought you didn't want to take the whining in paragraph four of the background out is what I thought you meant to do.

CHAIR WEISSER: No, I think we should take point five out of the recommendations, point four out of the issues. I think those issues of the IMRC funding should be dealt with separate and apart from the question of the flow of money into the various BAR accounts. I think by putting it there it looks too self-serving and it will undermine the pitch that we're making for the broader good of getting this money back into the BAR program.

MEMBER PEARMAN: So that pitch wouldn't even be in the same transmission of this report (inaudible).

CHAIR WEISSER: No. I in fact would include that pitch in the cover letter that we put on this report indicating that how frankly handicapped we were in doing the fundamental purpose of the report, which is are they getting the emission reductions they say they're getting. I mean, the bottom line after all this discussion is we don't know. We think, but we don't know. We can't do what they tell you to do in life,

trust, but verify. We can't verify, we didn't have the resources to independently verify it. Okay?

No comments from the audience. Okay. Let's move then back to the beginning. I'm going to page 1 of Part II. I have to say I am somewhat confused regarding the purpose of this discussion, Rocky. I read this this morning before I started driving, and I'm not sure why we're -- does this have to do with what I just talked about, the failure or inability to quantify the emission reductions?

MR. CARLISLE: Exactly. Although we couldn't verify or quantify it, we did review the methodology. And I have to tell you, Jude spent a lot of time reviewing that, and so this is what Jude had written up and I thought it fit on that topic.

CHAIR WEISSER: Hey, Jude, could you describe to us what this is?

MEMBER LAMARE: Thank you, Mr. Chairman. Originally, there was a committee assigned to evaluate the emission reduction estimates in the ARB/BAR report and to examine the methodology, and I was assigned to that committee. I think Jeffrey is also on that committee. And we listened to public testimony about some of the questions that the public had about these emissions estimates and how they were done, and I reviewed the technical appendix.

I think that even though we as a Committee do not have an independent technical staff or research capability to double check the agencies, that we did have adequate expertise to

review their methodology and we met with them and talked through how they went about doing this. And so this brief report addresses the issues that were raised in public comment about the emission reduction estimates, and then it also talks about the non-quantifiable aspects of the program, the benefits of the program that cannot be – will never be directly measured because they're not measurable that are part of how this Committee assesses the program emission reductions. This came out of our deliberations earlier this year.

So just to review quickly. There were questions raised about the two methods that the ARB used to estimate emission reductions, one is the roadside testing studies, the other is the emissions model EMFAC 2002. I'm already familiar with that model, and what ARB and the Bureau showed was that there is some level of confirmation that these two different methodologies do tend to support each other in terms of how many emission reductions have been achieved by the program.

Some of the questions that were raised by the public included things like that ARB had already demonstrated in their technical document. One that they adjusted the before and after vehicle population so they are comparing apples and apples and that the emission reduction differences in the two time periods are not a result of different model year vehicles being in the mix. That was a question that was raised in public testimony that brought into question the emission reductions that were

quantified in the report, and we just simply think that ARB didn't do that, that they did compare apples and apples.

In other words, we reviewed the methodologies, we're comfortable with the methodologies. We could not independently review them because the Smog Check data that we have stops measuring emissions once the vehicle passes, so we have no independent verification of a vehicle that passes a Smog Check what its actual emissions are, we only know it passes and then we stop measuring.

There were questions raised about the benefits that we're getting compared to the benefits that were expected in the 2004 SIP, and after discussing this with ARB and thinking it through, you know, we simply don't think there's any benefit in making that comparison. The 1994 SIP was an estimate of what the program could be expected to do and that was a ballpark. There were pilot projects that implemented the program initially and the agencies learned from that a little bit more about what they could realistically do.

We've already had one report, the 2000 report on emission reductions, and I'm familiar with how that dealt with the shortfalls, and the way that it dealt with the shortfalls is there were other ARB programs with additional emission benefits above what the SIP expected, and so it turned out to be a wash from a SIP point of view. The SIP doesn't require that each and every measure meet exactly the same amount, the target amount and nothing more and nothing less. It simply says here are the



measures, these are what you're required to do, implement them as required. When you get done, you'd better have all the emission reductions that you needed in aggregate.

There has also been a lot of update work done on the EMFAC 2002 since the last Smog Check report, so the emission inventories are much better. And by the way, there's a new ozone SIP and so there is a new target in a sense through Smog Check. So these are all moving targets that people are throwing darts at and I don't think they're terribly relevant to the work of the Committee, we think the methodology is sound.

More importantly maybe, oh, someone raised the issue that we didn't adequately look at the deterioration of vehicles after Smog Check, but indeed in the appendix ARB had performed an analysis of how long does it take for the vehicles to deteriorate and fail again after they've been Smog Check fixed and verified, and that was the number I read earlier which was 40 percent of the failed vehicles failing at roadside. It's a pretty high number. I mean, this is a major finding of the ARB technical analysis, that repairs are not durable and we have a big problem in sustaining emission reductions.

At the same time, the modeling does take that information and it only assumes that a Smog Check works for six months, so we're not overestimating the benefits that we're getting from this program.

Finally, this committee discussed three factors that are not quantifiable that we know add to the emission benefits of the program but we don't count those benefits.

One is the motivation that vehicle owners have to keep their vehicles repaired because they know they're going to have to do Smog Check, so they have more the habit of maintaining their equipment.

Second is the motivation of vehicle manufacturers to install durable emission control equipment, because they know those vehicles will be going through that process.

And third is the motivation that vehicle owners have to avoid failing Smog Check so that they do pre-inspection repairs. If they know they're going in for a Smog Check they get their car fixed. We don't measure that as a benefit of the Smog Check, we don't measure those emission reductions as a benefit, but we know that they are there.

Why do we have this section of the report? I don't know. I was assigned to the committee. This was on the list of things the Committee was going to deal with that pre-dated my being part of the Committee.

CHAIR WEISSER: Mr. Pearman?

MEMBER PEARMAN: I guess the main problem I have with this section is the first part of it on how ARB and BAR estimate benefits and some conclusions there that supposedly IMRC reached, which I didn't really understand. The first two paragraphs seem to talk about the roadside inspection methods

and the EMFAC model methods and seem to state that there's like a check and balance and based on the two we think that the numbers are reasonably accurate, and then it goes to talk about other subsamples and lab tests that seem to inform the estimates so you get a sense that the information is somehow valid.

And then the next paragraph says the IMRC was not able to perform an independent analysis of Smog Check records at this time due to the fast pass mode, et cetera. I didn't understand that whole paragraph or what the weakness is.

And then the last paragraph says that, "It is not clear to IMRC that the present statutorily mandated quantification serves a vital purpose in the evaluation of the Smog Check Program." That seems a pretty damning statement that it may serve a useless purpose for all this work we're doing, and it didn't seem to me to follow from the first part which seemed to positively describe the estimating methods, so I'm kind of confused about that and don't understand the apparent conclusions.

MEMBER LAMARE: Yeah, good points. Number one, the first two paragraphs I'm merely restating what was in the ARB/BAR report, so what I'm trying to do there is summarize what it is that they did and paint the big picture of all the different things that they did.

The third paragraph says why it is that we can't independently verify that with Smog Check records, which is our data that we have available to us.

And the fourth paragraph the Committee may not agree with and should throw out, but in looking at all this as your designee to look at this stuff, this is the conclusion that I drew from it, that at this point in the game after Enhanced Smog Check is twenty years old, so at least we've gone through two of these kinds of evaluations where the ARB and Bureau tried to estimate the emission reductions. I don't see that that estimate is performing a vital part of what we're doing. What we're trying to do is improve the program, fix, shape, guide. We're not questioning does it do what it's supposed to do or not, does it meet some arbitrary performance?

I don't see the Committee using this emission reduction data in any way to inform our recommendations. The feeling I got about is was it's an exercise they had to go through, the Legislature said they had to do it. EPA wants this information passed on to it in some bigger picture that they're working in on a national basis with inspection and maintenance programs, but for our purposes, I don't see us using this section of the report. So that's why I put it in there. I'm perfectly happy if you want to take that out.

MEMBER PEARMAN: Well, just to elaborate. If the difference is this comment referred to kind of the big picture of the total emissions in the program or in the SIP that might be reduced by all the actions, that's one thing that maybe is unclear, but we certainly do use their specific emission reductions for particular action items and recommendations, so I

think if that's the distinction maybe that's to be a more appropriate distinction to make clearer.

CHAIR WEISSER: Mr. DeCota.

MEMBER DECOTA: I also found this to be somewhat concerning to me, this first part, but I can't help but spending twelve years on this Committee remembering back in 1993 that we did find a great deal of error in the EMFAC modeling took place. We had never checked whether this EMFAC modeling today is more accurate than it was twelve years ago. We have not had the funding to do that. We don't know anything other than what we are being reported to, and most of it is in non-hard emission numbers, so it's in averages and it's in many other things, so I'm concerned with this part.

The other minor part is on page 2 of 29, you've got the second-to-last sentence you state that, "This analysis indicates that repairs fraudulently [sic] are not durable, likely due to both fraudulent testing and inadequate repairs." But the thing that might drive that more than any other factor is the inability of the industry to charge for the needed repairs because it does pass. There's no law that mandates a consumer to spend more than they have to to get the car to pass, and it must be taken in through this type of thought process.

MEMBER LAMARE: Where are you looking?

MEMBER DECOTA: I'm on page 2 of 29, the last two sentences.

MEMBER LAMARE: "Repairs frequently are not durable."  
What do you want added to that?

MEMBER DECOTA: Well, I think the driving factor is the reason they may not be durable is there's no law that allows the industry to charge more than the minimum to pass smog; you understand what I'm saying?

CHAIR WEISSER: Mr. Williams.

MEMBER WILLIAMS: As the other member of this subcommittee I just want to elaborate a bit. Maybe some awkward wording has confused us all.

This should have been and should always be an easy direct way of looking at what's the effect of the program. You have a car that fails and then it passes after some repairs. We can't even do that simple analysis in part because of the fast pass, so perhaps the third paragraph could just read that that third type of analysis is made very difficult by the nature of fast pass, so nobody was able to do that.

I think the issue in the fourth paragraph that's confusing everybody is perhaps because they haven't read the BAR/CARB report in a while. It spends a lot of time talking about the effects versus some hypothetical world of which there had been no program to speak of, and I'm sure they were frustrated at having to talk about that, but that's the mandate and it's very difficult to analyze things now, but all of the models like EMFAC are designed to help answer that question

which most of us now would agree isn't a particularly relevant comparison. That's just unfortunate for everybody.

CHAIR WEISSER: Thank you, I think.

Andy, you have a comment?

MR. PANSON: Yeah. You know, the whole issue of the fast pass, you're correct in what you say because the test cuts off once you pass and you can't compare a fleet average before or fleet average after and say this is the red in your fleet average, but that's why we do a roadside. I mean, that's not solely why but that's one of the things that the roadside testing allows us to do, so this notion that we can't assess the benefits of Smog Check I don't think is correct. I mean, we do that using the roadside data and I think we stand by the numbers that are in the report from EMFAC and from roadside.

There are limitations to those data. Nothing is perfect. I mean, the way to get the absolute benefits would be to pull in every single vehicle in California and test them and those are what the motor vehicle emissions are in California. That's not practical, but we do stand by the methods that we have, the methods that we've used. And, you know, I wouldn't tell you how to write your report, but I think things might come across a little inflammatory or they imply that we don't know anything, and if you want to say that, that's fine, I'm not trying to -

CHAIR WEISSER: Thank you, Andy. I need to get a show of hands. How many people have to leave at four? Good. Then we'll just proceed on through.

John.

MEMBER HISSERICH: Just a quick question. It makes referee to a technical appendix. I didn't understand how an analysis would industry that repairs frequently are not durable, likely due, I understand inadequate repairs, but like due to fraudulent testing. How does the durability of repairs relate to the voracity of the test?

CHAIR WEISSER: Is that in the BAR/CARB report, is that what they're saying, or is that -

MEMBER LAMARE: That's what they said. I can go back and re-look at that.

MEMBER HISSERICH: Well, it just seems to me to be - well, it doesn't logically follow in my mind as to how that works.

CHAIR WEISSER: I had the same question.

MEMBER LAMARE: They were never repaired, they were fraudulently tested.

CHAIR WEISSER: Okay.

MEMBER HISSERICH: That still doesn't speak to the durability of the repair.

MEMBER LAMARE: It's poorly drafted. Thank you everyone for commenting on the first draft of this, and please work on it.



CHAIR WEISSER: We'll have a few more. Gideon?

MEMBER KRACOV: I do think this issue of the emission reductions is an important one and I think this is probably one of the hardest topics that anybody could have tried to handle here, so it's certainly the Committee members that worked on this should be given some credit for tackling this very difficult issue. And I think that there is a lot here. I think maybe with a little of recognizing it's the first draft, with some edits, maybe some headings that can kind of focus it, we can get a sense of what we're looking for.

One thing, though, on page 2, benefits compared to expected benefits. Should that be the 1994 SIP instead of 2004 SIP?

MEMBER LAMARE: Oh, that's a mistake.

MEMBER PEARMAN: Yeah. So some little things like that. I mean, I'm still, though, a little bit grasping as to what the conclusion is on this, and recognizing that this issue is very important, it's a fundamental question for the program, I'm still not quite clear on what our conclusion is going to be on all this.

MEMBER LAMARE: The conclusion is that the method used in the report is a sound one, and that in addition to that –

CHAIR WEISSER: I'm sorry, the method used in the report is?

MEMBER LAMARE: ARB/Bureau method of estimating emission reductions is a sound method.

CHAIR WEISSER: Um-hmm. Did you have anything further, Gideon? Oh.

MEMBER LAMARE: That the attempt to do emission reduction estimates and quantify the impacts of the program is a good attempt because it helps improve the program. And as Bob said, the cost effectiveness of different ways of improving the program can be identified.

CHAIR WEISSER: Yeah, it seems to me that I have no problem with indicating that either the present method or refined method where the departments go through the program and do an evaluation is a healthy way to just try to strengthen the program, to refine the program over the years, I don't have an objection at all to that.

I do have difficulty winding my way through this one toward that conclusion, because that's a pretty simple conclusion, and I wonder and in fact I would suggest that in the very beginning we need to tell about the IMRC statute mandating that the IMRC produce an independent analysis of the benefits gained from the program. That's why we're doing this section.

MEMBER LAMARE: No, I don't think we're required to do that. They're required to do it.

CHAIR WEISSER: Rocky?

MR. CARLISLE: No, we're required to do it according to statute.

MEMBER LAMARE: All right.

CHAIR WEISSER: Yeah, I'm fairly certain we have the statutory obligation.

The second point is, guess what, we didn't, because we don't have the budget to do it.

The third point is, what we did do is we looked at their methodologies, and while you might quibble here or there –

MEMBER LAMARE: These were the issues that came up, A,B,C and here's how we dealt with those issues.

CHAIR WEISSER: Yeah, and it looked pretty clean. Now, I think this section associated with the part about the artificial construct and it's stupid. I just think the last paragraph on page 1, "The method used in estimating impacts is an artificial construct."

MEMBER LAMARE: Yeah, we can get rid of that.

CHAIR WEISSER: I think we should get rid of that whole thing. I have just some questions that, Jude, when you and I sit down, they're editorial and we can work through that. The best response to these criticisms is there's a bunch of things I'd suggest there.

Lastly, I think the report – I'm not satisfied, I guess, with this question associated with kind of the assumption that you can't do a before and after study of what has the program gotten. We've never had that opportunity to do a before and after. It's kind of embedded in here, isn't it?

MEMBER LAMARE: I thought I had that part in here somewhere.

CHAIR WEISSER: Well, I wonder, you know, we have this great opportunity in the Bay Area to in fact do a before and after study of what happens when you put an enhanced program into an area that beforehand was basic. I mean, it's a great opportunity.

I would like to put something in this report that puts the onus on the Department, on BAR to produce an analysis based upon real data before and after. And unless I'm missing something, we have perhaps the last best opportunity to actually do that, and I don't know what's going on there.

So I guess what I'm saying is I think that there is an opportunity to do a before and after study of real emission reductions based upon roadside tests from a basic area to an enhanced area.

MEMBER LAMARE: We can ask the ARB and the Bureau if they believe that they can do that. My point here on the top of page 3, overall assessment of air quality benefits of Smog Check, is that in order to really understand the full impact of a program you would have to have a random sample of vehicles that are going along living California life just like the rest of the vehicles, but not subject to Smog Check, and look at what happened to their emissions and compare them vehicle type by vehicle type to those that are subject. That's the only way you're going to really put it.

You're not going to do that with the Bay Area either because —

CHAIR WEISSER: They've been in a basic program.

MEMBER LAMARE: - life changes. It's not a real experiment, it's not a real field experiment. You can't really hold everything else constant and absolutely compare apples and apples and say this is what the program does. We can ask the Bureau and ARB what their thoughts are on looking at the Bay Area impacts and to what extent can we really assess the benefits there, but that's not what I'm talking about here. I'm talking about the fact that you've got people who know they're going to go through Smog Check, people who make the vehicles who know they're going to go through Smog Check, and people getting their cars repaired ahead of the Smog Check and all kinds of other factors that improve emission performance.

MEMBER BUCKLEY: Maybe we can test those Shelys with Alabama titles.

CHAIR WEISSER: All right. Then you don't believe this is the right place to press for an analysis by BAR and CARB on -

MEMBER LAMARE: Well, BAR and CARB have rolled all their roadside data into this analysis, and, you know, I don't know that there would be more information about the Bay Area vehicles than the roadside. Maybe there is, maybe there's something there to glean.

CHAIR WEISSER: Jeffrey?

MEMBER WILLIAMS: Well, if we really want a recommendation we want to say that certain analyses need to be

done or not done. I don't think anyone's saying some shouldn't be done, so we want to say it's very important to have a budget item that does more of this type of roadside testing or some analysis. These are crucial ways of evaluating this program and we strongly support further funds for roadside testing, to take an example like that. Is that a good one?

CHAIR WEISSER: I don't know.

MEMBER WILLIAMS: I think so. Here's an opportunity to do a lot in the Bay Area. We would support and hope to see –

CHAIR WEISSER: So you're suggesting as a conclusion or a recommendation saying it's kind of vital for the purposes of program refinement to have a robust blah-blah-blah.

MEMBER WILLIAMS: Yeah, yeah.

CHAIR WEISSER: And then specifically to take advantage of this one-time opportunity in the Bay Area to do a comprehensive analysis of the changes in emissions performance between a basic and an enhanced area. Is the Committee okay with – those Committee members that are still awake – in adding that sort of thing in? Okay.

Any other comments on the part of the Committee on this item? Are there any comments from the audience on this portion of the item?

Mr. DeCota.

MEMBER DECOTA: If this is a naive issue, just slap me here. Why can't we know what emissions are captured through the repair of vehicles?

CHAIR WEISSER: Well, I think the answer is that through various types of analyses they give an estimate and that estimate is in fact included in their report.

MEMBER LAMARE: The roadside data.

CHAIR WEISSER: Yeah.

MEMBER DECOTA: But why not from the analyzer?

MEMBER LAMARE: Because of the fast pass.

CHAIR WEISSER: The fast pass doesn't --

MEMBER DECOTA: So I got 7,000 folks out there that are in test-and-repair that got plenty of time to do a complete test.

MEMBER LAMARE: So do you want to make a recommendation that we outlaw fast pass?

MEMBER DECOTA: It skews our ability to get the actual numbers, does it not?

MEMBER LAMARE: (Inaudible)

MEMBER WILLIAMS: I think there is intermediate steps that would be very helpful here. There are a number of random samples already in the testing procedures. The Sample D I've talked about where there's no effort to do a high emitter profile, and there are others that are selected to go to test-only even though they wouldn't be through a high emitter profile. Perhaps the software would have to be changed, but we could have a sample, a T call it for a long test.

MEMBER DECOTA: For a full test.

MEMBER WILLIAMS: For a full test. Sample F or whatever.

MEMBER DECOTA: Would they have to change software for that?

MR. CARLISLE: No, that can be turned on and off on the VID. The problem is then you have inconsistencies. For example, if you go the full test at one station and a fast pass at another, there are going to be inconsistent results.

MEMBER WILLIAMS: Possibly, but if your Sample F you do the full test and there's a way of quantifying through the tests themselves the emissions and that might be a worthwhile thing.

MEMBER DECOTA: It sure wouldn't be expensive.

MR. CARLISLE: I'll check, but I don't think they have the ability to turn off fast pass for a specific model. They can turn it off by station.

MEMBER LAMARE: Randomly. Randomly.

MEMBER DECOTA: Yeah, F could be all the volunteers that want to be in F.

MEMBER LAMARE: No, it couldn't be a volunteer (inaudible).

MEMBER WILLIAMS: No. But there might be a way of doing that and that would help quantify this a lot. That might be a recommendation I'd support. Not knowing any of the technical details I'd be happy to to support it.



CHAIR WEISSER: I am less willing to jump into that without knowing more of the technical details, although I am willing to support a recommendation that suggests that the agencies look into that as a potential opportunity to find another data point to measure program benefits. Would the Committee go along with something like that? I see a bunch of heads nodding. Okay.

Is there anything further from the Committee on this?

I think now we enter into a really interesting portion of our discussion afternoon, which is what do we do now, and I think I'd characterize the 'What do we do now?' issue as how do we proceed to translate today's discussion into a document that you're comfortable with, that we are all comfortable with as a Committee, and willing to send out the agencies and the public for the formal review and comment period. And it seems to me that there are fundamentally just two tracks that we could choose to do.

Track one would be for you to essentially delegate the job for the, I think rather substantial editing that's going to be necessary to bring this report in shape to me, Rocky, and then one or sequentially more of the Committee members to work with me on coming up with a revised report, because I can't meet with more than one Committee member.

I would suggest based upon the past working relationship and involvement that we have, that if we went through route the principle person I'd want to be working with

in reviewing this and coming up with a new structure would be Jude. Poor Jude. But I think it would probably involve discussions with several of you as we went through the different subcommittee reports.

Under this option we would complete that review and we'd come up with a cover letter, and then we'd send this draft report out, recognizing that during the period of time we received comments from the public and the agencies, we still would be able to do additional editing. We would come back together in our January meeting having the benefit of the reactions from the agencies and the public to make our final changes to the report and presumably issue a final report to the Legislature and the Administration. Track one.

Track two. We get started doing precisely what I've just described, but in December on the 16th we hold another meeting here to go over a revised draft of this report to make sure that what we send out for review is something that the members of the Committee are comfortable with.

So basically you have two options, because one of the things we can't do is do, I guess, a sequential -- I can't contact Paul and then contact Jude and then contact Bob and then contact -- I can't do that, that violates the statute, so we either do it kind of just two of us or all of us.

That's the choices I think that we're faced with. Do we have a meeting in December so that everyone gets one more shot to make sure they're comfortable with how the report is

written and what's in the report, or do you authorize us to send out – me to send out a report sometime in the next, I guess, three or four weeks after editing it, and then when we meet again in January we do the changes based upon the feedback that we've received or the additional thinking that has taken place in your minds; what do you want to do? Dennis.

MEMBER DECOTA: I think we should vote on it and go.

CHAIR WEISSER: Vote on what?

MEMBER DECOTA: On one option or the other.

CHAIR WEISSER: Okay. Is there any discussion before we do a vote?

MEMBER LAMARE: Is there a motion?

CHAIR WEISSER: Jude wants to make a motion to make a motion. No, we're not going to have that discussion.

Mr. Pearman.

MEMBER PEARMAN: In general I support your track one idea and I have a question about that. Once the draft goes out, would it be possible when comments come in from, say, agencies that they could be distributed to the members and we could individually convey any further comments to Rocky before the January meeting? I'd rather not just come here on January 16th and have to make all our final edits on the fly and vote on them, but if we could be able to get some input in individually to Rocky he might see some common thread or something that he certainly thinks we'd all agree with and can have that anticipatory redraft reviewed already.

CHAIR WEISSER: Absolutely.

MEMBER PEARMAN: Then I would move that we adopt your track one proposal.

MEMBER HISSERICH: Second.

CHAIR WEISSER: The track one proposal. Okay, so there's a motion that has been made by Mr. Pearman, seconded by — John, was it you? — that we essentially delegate the job of further editing to me and Rocky, and that I engage principally with Jude, however, I may be needing to contact individuals on the sections that you're involved in to get suggestions. And is there any discussion on that option? You guys really don't want to meet again in December, that's the bottom line, I think. Is that correct?

Dennis.

MEMBER DECOTA: I think you need to really think about this for a second. I mean, if you do not take and come back before the public and us, you know, you're going to delay your report in the method you're taking right now. In my opinion, it's going to delay well beyond what you expect in January, because if there is any consternation that occurs because of whatever is done, you're going to try to deal with it before the final draft and it may delay you out.

Wouldn't it make a whole lot more in option two of meeting in December on the 16th in order to flush that out so that we can expedite this issue and get our report submitted and

do it in a proper forum that if there is public comment or others that it be taken at a public meeting?

CHAIR WEISSER: You think that it would be likely that it would be a lengthier process if we didn't have the December meeting because people — I'm not sure why.

MEMBER DECOTA: Well, because people will have the ability to have a date set to get their comments in, which will allow staff and us to review those if there are comments that we want to take into consideration before drafting, that you're going to put off until January, as I see it.

CHAIR WEISSER: Well, I think what would occur, let's assume just for the sake of argument that we're able to do a redraft of this and get it out December 15th and we send it out to the public for a 30-day period. And when is our meeting in January? Hello?

MR. CARLISLE: I'm checking. Yeah. Hold on one second. I suspect we're going to have to change that.

CHAIR WEISSER: It's the 11th?

MR. CARLISLE: Yes.

CHAIR WEISSER: Okay. Well, that means that if we're going to have a 30-day period for public comments and review that we would need to get this draft out December 10th, essentially, which isn't going to be particularly easy.

MEMBER LAMARE: Mr. Chairman, we just went through this whole draft.

CHAIR WEISSER: Um-hmm.

MEMBER LAMARE: We have detailed notes and a transcript as to what to change. We're not going back and redoing things, we're editing a document we have right now.

CHAIR WEISSER: Um-hmm.

MEMBER LAMARE: It should be edited and out. I don't know about Rocky's schedule, but clearly before December 10th.

CHAIR WEISSER: You know, I may have to suggest that someone other than me then work with Jude on this document. I am completely out of pocket the week following Thanksgiving and the first two days of the following week with other work-related obligations. I'm out of the office, I will not be able to do anything. That's eight days of valuable time for editing, so I may want to ask someone else to work with Jude on this than me in the editing. I certainly tomorrow would participate in a call with you to get started. Everybody's ducking. Everybody's ducking.

Thank you. Mr. Williams has volunteered to work with Ms. Lamare on the next edit.

MR. CARLISLE: Can we applaud that?

CHAIR WEISSER: Buy chocolate for him. However, I'd like to participate in a discussion tomorrow on a conference – we're going to have a little conference call, Rocky, Jude and I, to try to pull together what we heard today and really address some of the structural issues associated with the report.

Okay. So a motion has been made, it's been seconded that we go on track one, which would be the delegation to me of

issuing the report with a draft cover letter. I will be able to do that review part. And that we not have a December meeting, that we try to review this and get this out the door December 10th so that we can receive the public input in the month preceding our January meeting, work the January meeting to integrate what we hear from the public and the agencies into any modifications we want to make in the report, and then issue hopefully issue a report in January.

You've raised an issue raising some concerns associated with that and I thought you presented them pretty well.

Mr. Pearman, further discussion.

MEMBER PEARMAN: Well, I don't think that will work because if we don't get it out till the 10th of December and we give people 30 days, a lot of people are going to take the 30 days and then we hold the meeting on January 11th, so we won't have time to synthesize any substantial comments from the public. I think if we go that route, we need to try and push our January meeting back to the latter week of January; otherwise it renders the public process kind of useless for us.

CHAIR WEISSER: I agree. Does anyone disagree with that?

MR. CARLISLE: That was going to be my comment.

CHAIR WEISSER: So lucky Lynn is going to be asked to do a survey to make sure that we can get a good date for everybody and find a good meeting room.

MS. FORSYTH: (Inaudible)

CHAIR WEISSER: What number is it?

MS. FORSYTH: It would be the 25th.

CHAIR WEISSER: It works for me.

MS. FORSYTH: All the meetings next year are scheduled for the fourth Tuesday of the month, so we stay on the same timeframe, just go ahead and plan it and send emails out to you guys and you guys can respond back. Will that work?

MEMBER DECOTA: Yeah.

CHAIR WEISSER: Yeah. And thank you, Robert, for raising that fundamental logistical issue. We still need to obviously try to shoot to get something out the door if this approach is taken. Dennis made a pitch that it not be taken and I want people to hear that, that he's suggesting that we might be better off having one more public meeting to review a redraft before we send it out as a draft.

Is that correct, Dennis?

MEMBER DECOTA: That is correct.

CHAIR WEISSER: Okay. So we have this motion, it's been seconded, we've had discussion. All in favor of delegating to me and via me to Jude and Jeffrey to come up with a final draft report that would be sent out to the public and agencies without meeting again, please signify by saying aye.

IN UNISON: Aye.

CHAIR WEISSER: Are there any opposed?

MEMBER DECOTA: Opposed.



CHAIR WEISSER: Oppose. But the motion carries, and that's the way we will go.

John.

MEMBER HISSERICH: Were you opposed?

MEMBER DECOTA: Yes.

MEMBER HISSERICH: Oh, I see.

CHAIR WEISSER: Yeah, I think that another meeting actually would be helpful. Give us another shot to look at a redraft.

MEMBER HISSERICH: No objection to that, but I thought you (inaudible).

CHAIR WEISSER: I'm sorry, I didn't exercise a lot of leadership on that, but —

MEMBER HISSERICH: If I may, it's just I have some difficulty with groups editing things because it really is, you know. I have no objection to doing it the latter way but it seemed like we were going down a road that everybody thought was okay.

CHAIR WEISSER: The motion has passed, that's what we're going to do. We will have an opportunity to have our own reflection on what goes out, so don't feel disturbed if what goes out is not as perfect as you'd like it. I think we'll have an opportunity to make further refinements, and if we get some stuff wrong, we'll correct in our January meeting. I'm sorry if I misled you, John.

Sir.

MR. CARLISLE: We have one email from Frank Bohanon. He'd like to become part of the record, if I may?

CHAIR WEISSER: Absolutely.

MR. CARLISLE: It says, "Please note that SEMA's comment on the issue of light duty smoking vehicles on numerous occasions was the driving force behind increased enforcement via SB708 Flores. Rather than using a subjective method of evaluating excessive smoke, SEMA supports a more objective method such as refereed in the legislation." He's used an example of an SAE test procedure. "An increased level of enforcement via the various hotlines, 1-800-CUT-SMOG, et cetera, would also be desirable provided there could be assurances against fraud and malicious frivolous notifications. SEMA would be happy to participate in any further efforts at reducing smoking vehicles. Regards, Frank Bohanon."

CHAIR WEISSER: Thank you very much. I hope Frank had an opportunity to hear this morning's presentation by the Attorney General's Office. I would be very interested in hearing his reactions. It was really good for us to hear Mr. Sterns and his reaction to it and I think it would be helpful for us to know what Mr. Bohanon and his folks think, too.

— oOo —

In any event, is there any further business to bring before the Committee? I see two hands in the audience and we'll start with Mr. Armstrong first.

MR. ARMSTRONG: Yes. Before I start I'd like to ask that this draft as it was be available and when a second draft is provided to the Committee that that be made available on the website so that people can have a chance to take a look, they can be marked Draft 1, Draft 2, but keeping the public in the dark is a little tough to deal with.

CHAIR WEISSER: Let me interrupt you, and put a hold on the time. There is no keeping the public in the dark here, Larry. The reality is that the Committee did not get this document until Sunday. Let me finish. We made a mistake by not having copies here when we walked in the room, and we corrected that as soon as that became apparent.

MR. ARMSTRONG: I wasn't criticizing that. I was provided a copy. I was asking that --

CHAIR WEISSER: There is no requirement that we put a working draft on the website, and I'm concerned and I want to think about it, that if we put it on the website, we already know it's going to change rather markedly in a number of areas. We might be misleading people to even have it on. Without a doubt, when we have a final draft that we send out we will put it on the website, but I'm concerned about us putting on the website a document that we today already kind of took apart and put back together at least conceptually. I think it might be misleading to the public.

MR. ARMSTRONG: Well, the opposite point is that I think I'm a fairly good reader, and I can tell you that I

haven't been able to absorb those 25 pages or whatever it was today sitting here, and Mr. Pearman thinks he wants to have 30 days to look at something and if we continue like this I got 30 minutes, so I think if you're going to have something out, it can be marked as a preliminary draft number two and just get it available, but it ought to be out there so people can see what's going on.

CHAIR WEISSER: Yeah, Larry, we should be clear. The next one you will get. The one that when we finish the editing of this thing, that's going out to everybody. Maybe I'm not understanding.

MR. ARMSTRONG: Well, no. There are people that were not here today that might be interested in knowing -

CHAIR WEISSER: Yeah, you have a good point.

MR. ARMSTRONG: - what was -

CHAIR WEISSER: I don't know. What does the Committee think? We could stick something on the website, but darn it, it has to be so labeled, you know, this is a working draft which already been and we know is going to be changed markedly. I just don't want people thinking this is - Jeffrey?

MR. ARMSTRONG: Well, I fully agree with that. I don't have a problem with that. They could be marked for what they are, but they ought to be available.

MEMBER WILLIAMS: I'll observe that this transcript will be nearly impossible to understand if it's not there.

CHAIR WEISSER: You're right.

MEMBER WILLIAMS: So why not make it as an appendix to the transcript that this was the working draft we were discussing?

CHAIR WEISSER: Is that possible for us to do? And we could indicate somehow that if people are interested in seeing the working draft to refer to the appendix of the transcript? Do you think that would work all right, Larry?

MR. ARMSTRONG: Well, if it's on there. If it's a thing that has to be -- I don't know if I'm understanding what you're saying, but if somebody has to go get an attachment, a lot of companies tell their people don't go get attachments.

CHAIR WEISSER: Well, you know how you download the transcript, it's a .pdf file that they put up on the --

MR. ARMSTRONG: You should know by now that I don't know how to turn a computer on, so the answer to that would be no.

CHAIR WEISSER: Oh.

MEMBER DECOTA: But you have folks that do know how to download a .pdf file, Larry.

MR. ARMSTRONG: But would it be an attachment to --

CHAIR WEISSER: It would be part of the transcript.

MR. ARMSTRONG: It would be part of the transcript.

CHAIR WEISSER: Yeah.

MEMBER DECOTA: Yes.

MR. ARMSTRONG: Okay. Well, that's easy, then. Okay.

CHAIR WEISSER: All right. Well, I'd feel more comfortable doing that than I would having it out there as – and I think it would be less likely people would misinterpret it as anything other than a working product. Okay. Anything further, Larry?

MR. ARMSTRONG: Yes, thank you.

CHAIR WEISSER: Back on the time.

MR. ARMSTRONG: Okay, on the record. My name is Larry Armstrong. I have expressed a concern over the months that requesting you folks to determine whether you're trying to keep clean cars clean or find dirty cars. I think that's a fundamental question and this Committee has, to my knowledge, never addressed it.

The second thing is that the actions taken by my state have effected a lot of lives. People have bought equipment based on some level of trust of their government. I'm going to tell you that any small business person that asked me whether they ought to trust their government, I would have to tell them from my personal experience that that would not be a thing that you would want to do.

I have personally signed guarantees on a about a quarter of a million dollars worth of equipment that probably no sane person would have done, having the ability to step downstream to today. The people in the Smog Check industry have been ripped off by my government and I don't think you folks have addressed that.

Roadside tests. Assuming that the roadside test is accurate is just as fallacious as going for assuming that the test done by a smog technician is accurate. The classic example was in the last go-round where it was said that one car was failed on the roadside because the wingnut on the air filter needed a turn and the vehicle was failed. You folks have no way of knowing whether that was a fraudulent Smog Check or whether the wingnut was loose on the air filter, so I would ask you to be careful in both sides. You should question both sides but you ought to be questioning both.

I'm assuming that the people that designed the program knew what I'm going to say, and it should cause you to ask some questions. If the program was designed so that after repair tests did not run a fast pass, at that point in time you would have useable information and you would know what the benefits were from those repairs. The fact that it is not available is kind of an interesting question, and I think in order to get that, that would probably require a software change that might take some time, but if anybody really wanted to know what the effect of those repairs were on the machine, then that would do it.

Asking for there's about right now there was about five million tests a year going that would have required when Mr. DeCota was saying they could just run them all and eliminate the fast pass, BAR figured that was about two minutes a test on five million tests, so you're talking about ten million minutes

that somebody would be spending doing something, and right now it's a little bit difficult to get paid to do anything out there, so those ten million minutes, I'm assuming, would just go by the wayside.

Thanks for allowing me the extra time.

CHAIR WEISSER: Thank you, Mr. Armstrong.

MR. RICE: Bud Rice, Quality Tune-Up Shops. Just a couple of quick comments.

One thing, a lot of the recommendations had to do – and I want to hit on remote sensing just one more time quickly – had to do with remote sensing. I did hear somebody from one of the State agencies say that they had a report that may be coming up first part of the year, something along those lines, but to be recommending something that you're not sure of how the science works out or what the outcome's going to be, it's a little suspect. You know, if we waited until they came up with the report and they said, well, 60 percent of the time it was accurate, and then that was part of your recommendation, although we know that at 60 percent of the time at least that would be something that would be maybe a little more accurate.

Second thing on my list was we had had a conversation last time I was here about the rental truck U-Haul guys and them not being registered in California, and I think there was going to be some looking into that as to whether or not there were interstate commerce provisions that needed to be looked into.



There's a lot of trucks on the road that are not subject to smog checks like the U-Haul rental kind of guys.

And then my last one was going back to the fast pass. So far as the data, and if I could Mr. Williams maybe direct it towards you, I don't know if it's possible to query the data and say anything that falls within a test that only takes X amount of time and a regular test takes this much time, maybe we can eliminate from the sample the things that take short times, move that out of the data stream and now we're just going to look at this stuff in terms of looking at the data. Just a quick comment. Thank you, sir.

MEMBER WILLIAMS: I had that same thought, and sorry to report that the data files I have which are compressed to not include the time, and so can't do that, not easily anyway. Maybe with a sample we could do that.

CHAIR WEISSER: The only comment that I'd have regarding the remote sensing is that, you know, all of the Committee's recommendations associated with new technology are dependent upon the technology actually functioning. We're not recommending, you know, go use something that is shown not to work, so it's going to be dependent upon this demonstration.

But remember that remote sensing is not a new technology, it's been around. We know where it works, how it works, how well it works. In a lot of cases when we're trying to get a California specific series of examples to find out how it might be used, if it can be used in a productive fashion, and

I'm looking forward to seeing what the data is. I am not interested in being associated with pushing or implementing a program that is going to blow up in my face as well as your face, so don't worry about that.

Bruce.

MEMBER HOTCHKISS: Just a quick on the remote sensing. It strikes me that we've been arguing – we, meaning industry, Committee, everybody – arguing about remote sensing for many, many years, and before we end our argument technology will move on to the next step. So, you know, I mean there's so much out on the horizon that will just make remote sensing obsolete that I'm not sure why we're worried about it.

CHAIR WEISSER: Okay. Any further comments? Jude.

MEMBER LAMARE: Thank you. Just a reminder there are a number of reports that we're still working on, and I wanted to mention that Dr. Paul Ong of UCLA and Dr. Manuel Pastore of UC Santa Cruz have provided input, and particularly that the Center for Justice, Tolerance and Community at UC Santa Cruz has provided us with some pro bono research work.

CHAIR WEISSER: That's excellent. I don't know the first gentleman but I do know Dr. Pastore and you couldn't do better in terms of finding somebody who's been involved in the issue of social justice and environmental justice issues analytically for a long period of time. I'm glad to hear he's involved.

Mr. Pearman.

MEMBER PEARMAN: There was a letter I think we addressed to Chief Ross back in October asking for some specific statements about how the budget has affected his personnel dealing with the Smog Check Program, and I was wondering if you've got any answers yet.

MR. CARLISLE: No.

CHAIR WEISSER: Got the same answer that we did the last time you asked that question. I noticed in the book that you passed out to us this morning there are a couple of letters, and I'm just curious. Do you guys take care of those letters for us? We have one from Andrew Pfeiffer and –

MR. CARLISLE: Yes, we file those.

CHAIR WEISSER: You file them or do you respond to them?

MR. CARLISLE: No, that one I'm going to respond to, but I suspect that's going to be a future item.

CHAIR WEISSER: Oh joy. Okay. Bruce.

MEMBER HOTCHKISS: I was kind of confused by Mr. Pfeiffer's letter. I mean, engine changes are allowed.

MR. CARLISLE: He wanted an engine change without the proper transmission is what he's looking for.

CHAIR WEISSER: Okay. You know, I really don't want to go into it at this point. I just want to make sure that when the public writes us they're getting a response and we're doing the kind of follow-up that's necessary.

I need a motion for adjournment, and that motion has been made by Mr. DeCota and has been seconded by Mr. Pearman. Any discussion? Hearing none, all in favor of adjournment signify by saying aye.

IN UNISON: Aye.

CHAIR WEISSER: Any opposed? Hearing none, we are adjourned. Thank you.

**(Meeting Adjourned)**

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TRANSCRIBER'S CERTIFICATE

This is to certify that I, TERRI HARPER, transcribed the tape-recorded meeting of the California Inspection & Maintenance Review Committee, dated November 23, 2004; that the pages numbered 1 through 239 constitute said transcript; that the same is a complete and accurate transcription of the aforesaid to the best of my ability.

Dated December 1, 2004.

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TERRI HARPER, Lead Transcriber  
Northern California Court Reporters

# INTRODUCTION

## BACKGROUND

The *Inspection and Maintenance Review Committee's Review of the Smog Check Program 2004* is hereby submitted to the Legislature and the Governor in accordance with Section 44021 of the Health and Safety Code. This report reviews the recommendations set forth in the *Evaluation of the California Enhanced Vehicle Inspection and Maintenance (Smog Check) Program* (Dated April 2004) jointly drafted by the California Air Resources Board (ARB) and the Department of Consumer Affairs, Bureau of Automotive Repair (BAR) and hereinafter referred to as the ARB/BAR Report.

The Inspection and Maintenance Review Committee (IMRC) is comprised of 13 members appointed by the Governor, the Speaker of the Assembly, and the Senate Committee on Rules. The Committee currently has three vacancies. The members and their areas of expertise are identified in Table 1 of the Appendix.

## CALIFORNIA'S SMOG CHECK PROGRAM

The Department of Consumer Affairs, Bureau of Automotive Repair (BAR) administers California's Smog Check program (Program). State law requires that California registered gasoline powered motor vehicles have a Smog Check inspection biennially in the enhanced and basic areas of the State, and on change of ownership in other areas of the State. In addition, a loaded mode test is required in enhanced areas of the State whereas a less demanding two-speed idle test is required in non-enhanced areas. Exhibit 1 of the Appendix illustrates geographical areas identified as either enhanced, basic or change of ownership areas.

The BAR administers a decentralized Program which means that the Smog Check stations are privately owned and operated. BAR licenses approximately 8,000 privately owned Smog Check stations and 15,000 Smog Check technicians. The Smog Check station network conducts approximately 10 million Smog Check inspections per year and is an important component of California's strategy to improve air quality.

## LEGISLATIVE CHANGES OF 2004

The 2004 Legislative session yielded several statutory changes that improve the effectiveness and the public acceptance of the Program. Moreover, these Legislative changes also impact the Program recommendations contained in the ARB/BAR Report. Specifically, SB1107 (stats. 2004, chap. 230, §7) and AB2683 (stats. 2004, chap. 704, §2) make fundamental changes to the Smog Check program which renders some of the ARB/BAR recommendations moot. Although several other bills were chaptered during the 2004 Legislative session that impact the Program, their changes do not impact the recommendations set forth in the ARB/BAR Report.

## **PROCESS**

In accordance with Section 44021 of the Health and Safety Code, the IMRC reviewed the ARB/BAR Report to make recommendations to the Governor and the Legislature regarding the Program. To review the ARB/BAR Report, the IMRC created subcommittees of two members each. Each subcommittee was responsible for reviewing their assigned topic and reporting back to the full committee. The IMRC conducted monthly public meetings to discuss the findings of each subcommittee and receive comments from the public, the automotive repair industry, and other interested parties. In addition, the subcommittees conducted meetings with the Department of Consumer Affairs (DCA), BAR and ARB.

Prior to submitting this report to the Governor and the Legislature, the IMRC distributed a draft of our report to the following state agencies and organizations to solicit their comments:

- California Highway Patrol
- California Department of Motor Vehicles
- State and Consumer Services Agency
- The Automotive Repair Industry
- Approximately 265 interested parties from the IMRC mailing list.

The BAR also distributed an electronic message on behalf of the IMRC via the emissions analyzers used in Smog Check stations and referred to as an ET Blast. As a result, approximately 8,000 Smog Check stations received a notification regarding the availability of the draft IMRC report.

## **SCOPE**

Part I of this report provides an Executive Summary of the subjects reviewed in the ARB/BAR Report in addition to our conclusions or recommendations. Part II includes the IMRC's more detailed review for each of the subjects in the ARB/BAR Report. Part III contains comments from State agencies, the public, the automotive repair industry, and other interested parties. Part IV is the Appendix.

In addition, the IMRC is conducting an in-depth analysis of several topics not included in the ARB/BAR Report. These additional analyses will not be ready for submission to the Governor and the Legislature until mid 2005. These additional report topics will include the following:

- A statistical analysis and comparison of three Smog Check station types; Test and Repair, Test-Only, and Gold Shield (CAP);
- A Consumer Information Survey reporting on the public's perspective of the program and the availability utility of Smog Check information disseminated to car owners;
- The extent of program avoidance and recommendations to lessen the number of vehicles illegally avoiding the Smog Check inspection process; and,

- An assessment of vehicle pre-conditioning<sup>1</sup> measures used by various types of Smog Check stations that may cause a vehicle to fail at one Smog Check station and pass at another even though no repairs were performed.

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## **PART II: DETAILED REPORTS**

### **QUANTIFYING THE EMISSION REDUCTIONS**

The IMRC reviewed the ARB/BAR methodology for estimating emission reductions from the Smog Check program and heard a number of questions raised by the public and IMRC members regarding the efficacy of the methodology used.

#### **How ARB/BAR Estimates Benefits**

ARB/BAR uses two methods for estimating emission reductions from Smog Check. First, they analyze the results of roadside inspections conducted of samples of in-use vehicles. Second, they use the EMFAC2002<sup>2</sup> model to simulate California vehicle emissions with and without the present Program. The results of these two methods are compared in the Report, page 18, Table 3.5. Both the roadside and the emissions factors model have specific limitations. Using both data sets demonstrates that comparable results are found with either data set. The agencies reported to IMRC that the vehicle distributions by model year are the same for both “before and after ASM”. The emissions benefits identified are not the result of the changing model year mix in the overall vehicle population over time.

Roadside inspection data is the fundamental basis for the benefit assessment. This is an independent way to measure impacts through a permanent year round roadside inspection with dynamometer tests of systematic samples of vehicles in the enhanced areas of the State. In addition to the random roadside inspections, the BAR and ARB have conducted special studies on smaller sub samples that have informed their decisions on specific issues such as gas cap testing, liquid leaks, on board diagnostic systems, and pressure tests. They also have lab-test results that inform estimates.

The IMRC was not able to perform an independent analysis of Smog Check records at this time. Due to the “fast-pass” mode used in the loaded mode test, Smog Check records of emissions fail to provide a reliable method for estimating the Smog Check impact on emissions. In a fast-pass mode, the test moves on as soon as the required level is passed. As an example, the 15 MPH portion of the loaded mode test has a maximum time frame of 100 seconds. If the vehicle passes the tail pipe emission test with an average reading of “pass” in the first 30 seconds of the test, then the analyzer proceeds to the 25 MPH portion of the test. Therefore, test printouts are not a reliable indicator of on-road emissions.

The method of estimating impacts used in the Report is clearly an artificial construct intended to respond to a statutory mandate. Since a number of aspects of the program cannot be quantified, it is not clear to IMRC that the present statutorily mandated quantification serves a vital purpose in the evaluation of the Smog Check program. It is one view of existing data that assigns a numeric value to the program for tailpipe emission reductions.

Moreover, the benefits of Smog Check go beyond tailpipe emissions. The total tons reported reduced includes evaporative emissions reductions. Evaporative<sup>3</sup> emission benefits are substantial and have become a greater part of the program benefit in recent years.

<sup>2</sup> EMFAC2002 is short for Emissions FACtor 2002, and is a computer model capable of providing estimates of current, past, and future emissions from on-road motor vehicles from 1970 to 2040.

## **Benefits Compared to Expected Benefits in the 2004 State Implementation Plan**

The IMRC heard criticisms that the State Implementation Plan (SIP) requirements established in 1994 and the Program's performance in relation to those requirements are not accurately portrayed in the evaluation report. The criticism implies that any shortfall between the 1994 SIP estimate of I&M benefits and actual performance is a failure on the part of the state in program implementation.

The IMRC found that the best response to these criticisms is to acknowledge the following:

- The 1994 SIP emission reductions were estimates based on theoretical knowledge at the time;
- Pilot projects provided more information about what could actually be achieved, and benefit estimates changed after pilot projects were completed;
- The 2000 report compared before and after enhanced Smog Check. Then additional emission reductions were achieved by other unanticipated ARB measures that backfilled the 2000 shortfall;
- Since 2000 there have been two updates of EMFAC2002 with a much better understanding of what is going on in the motor vehicle emission inventory.
- The 2003 SIP has a new inventory basis and new targets for the SIP. For example, the model assumes that vehicle failure occurs on average six months after smog check. The deterioration rate by model year is based on studies of samples of vehicles.

## **Does the Analysis Adequately Account for Deterioration After the Smog Check?**

One commenter asked that the IMRC perform a detailed examination of roadside data to compare failure rates before and after a Smog Check inspection. The purpose of this exercise appears to have been to provide more specific information regarding the durability of repairs and therefore the extent of emission reductions gained through repairs. The IMRC considered the requested data analysis and determined that it would not produce reliably better results than a similar analysis performed by ARB and reported in the Reports Technical Appendix on pages 2-24 to 2-30. This analysis indicates that repairs frequently are not durable, likely due to both fraudulent testing and inadequate repairs. This same analysis is the basis for the vehicle failure rate assumed in EMFAC2002.

## **Overall Assessment of Air Quality Benefits of Smog Check**

The IMRC recognizes that our ability to estimate the benefit of the Program is severely limited by the fact that we cannot test and compare a population of vehicles subject to the Program with an identical population of vehicles not subject to the Program. In essence, it is not possible to quantify the full benefit of the California Smog Check program because we cannot make this fundamental comparison.

There are a number of benefits of the program that are not directly measured:

- The motivation for vehicle owners to maintain their vehicles so they do not fall into disrepair;
- The motivation of vehicle manufacturers to install durable emissions control equipment;
- The motivation that vehicle owners have to avoid failing Smog Check, leading to pre-inspection repairs.

<sup>3</sup> Evaporative emissions are vaporous emissions that emanate from the fuel tank, fuel delivery lines, gas cap, or any fuel evaporative system component.

## **Conclusion**

The present method of evaluation has engendered a critical examination of the Program by the agencies that has resulted in numerous recommendations on ways to strengthen the emission reduction potential of the program. The IMRC applauds this approach and encourages the agencies to continue to look for cost effective emission reductions in the Smog Check process.

## **ARB/BAR REPORT RECOMMENDATION #1**

The ARB/BAR Report suggests “Clean Screening” 5<sup>th</sup> and 6<sup>th</sup> model year vehicles to except them from the Smog Check inspection when they have a high probability of passing the inspection.

## **Issues**

1. Emission reductions from 5<sup>th</sup> and 6<sup>th</sup> model year vehicles equals approximately 4 tons per day of hydrocarbon and NO<sub>x</sub>.
2. Identifying high emitters through the traditional Smog Check program among the 5<sup>th</sup> and 6<sup>th</sup> model year vehicles is expensive.
3. SB1107 (stats. 2004, chap. 280, § 7) excepts all 5<sup>th</sup> and 6<sup>th</sup> model year vehicles from the biennial Smog Check inspection.

## **Background**

1. The ARB/BAR Report indicates that excepting all 5<sup>th</sup> and 6<sup>th</sup> model year vehicles from the biennial Smog Check inspection requirement would result in an emission reduction loss of 4 tons per day of HC and NO<sub>x</sub> pollutants. This is a significant loss of emission reductions needed to achieve California air quality goals.
2. According to the Report, excepting 1/3 of 5<sup>th</sup> and 6<sup>th</sup> model year vehicles (20,000 vehicles per month) from the biennial Smog Check requirement, increases emissions by 0.5 tons per day whereas excepting 54% of this vehicle fleet (32,000 vehicles per month) increases emissions by 1 ton per day. The cost to reduce the emissions from this segment of the fleet through the traditional Smog Check inspection is approximately \$44,000/ton. In other words, these are expensive emission reductions.
3. Although the Report recommends excepting only a portion of the 5<sup>th</sup> and 6<sup>th</sup> model year vehicles from the biennial Smog Check inspection, SB1107 (stats. 2004, chap. 280, § 7) eliminates all 5<sup>th</sup> and 6<sup>th</sup> model year vehicles from the biennial Smog Check requirement. This exception increases HC and NO<sub>x</sub> emissions by 4 tons per day. As a mitigation measure, SB1107 also assesses a \$12 smog abatement fee to owners of these vehicles and allocates \$6 of this fee to the Air Pollution Control Fund to be used to fund Carl Moyer Memorial Air Quality Standards Attainment Program (Carl Moyer Program) projects. These funds are disbursed by the Air Quality Management Districts to fund various stationary and mobile source diesel emissions reduction projects. The remaining \$6 is divided between the Vehicle Inspection and Repair Fund (VIRF) and the High Polluter Repair and Removal Account (HPRRA).

In spite of the mitigation measure identified in SB1107, further refinements of this exception could regain a majority of the 4 tons per day of emissions lost as a result of SB1107. Therefore, it would be desirable to develop a method to identify 6 year and newer model year vehicles likely to fail the Smog Check inspection. Any vehicle identified as likely to fail the inspection would be required to

be tested on a biennial basis. Using this refinement of the exception of 5<sup>th</sup> and 6<sup>th</sup> model year vehicles appears to be a cost effective measure.

### **Proposal**

Although the ARB/BAR Report recommends “clean screening” the 5<sup>th</sup> and 6<sup>th</sup> model year vehicles, SB1107 (stats. 2004, chap. 280, § 7) excepts all 5<sup>th</sup> and 6<sup>th</sup> model year vehicles from the Smog Check requirement. The IMRC understands the rationale behind the new Legislation and also applauds the Legislature for their insight in allowing an inspection for any 6-year and newer model year vehicle if it is determined that they may fail the Smog Check inspection. In part, SB1107 (stats. 2004, chap. 270, §7) grants authority to the ARB and BAR to require a Smog Check of 6 year and newer model year vehicles if “The department determines through remote sensing activities or other means that there is a substantial probability that the vehicle has a tampered emission control system or would fail for other cause a smog check test as specified in Section 44012.”

Therefore, the IMRC suggests that BAR and ARB develop the appropriate methodologies to identify likely high emitting 6 year and newer model year vehicles and require that those vehicles be subjected to a Smog Check inspection. The identification methods could include the following:

- remote sensing devices used on California’s roadways to identify vehicles that are potentially high emitters;
- data gathered through BAR’s roadside testing activities that suggests a specific make or model vehicle may have a high probability of failing the emissions test;
- data gathered as a result of the ARB’s vehicle surveillance program; or,
- specific make and models of vehicles identified as possible high emitters using BAR’s Vehicle Information Database.

### **Concerns**

Eliminating the 5<sup>th</sup> and 6<sup>th</sup> model year vehicles from the Smog Check program will have a negative impact on some Smog Check stations due to the loss of Smog Check inspection and repair income. As indicated in the ARB/BAR Report, the loss of testing income amounts to approximately \$11 million annually. The ARB/BAR Report used 1/3 of all 5<sup>th</sup> and 6<sup>th</sup> model year vehicle inspections (approx. 240,000/year) and an average of \$46 per test (based on 2002 DCA/BAR data). However, SB1107 excepts all 5<sup>th</sup> and 6<sup>th</sup> model year vehicles and therefore the loss to Smog Check stations totals approximately \$33 million per year.

The IMRC cannot overlook the exceedingly high cost of identifying emission reductions for this segment of the fleet and the cost to consumers through traditional Smog Checks. Therefore, the IMRC recommends a more targeted approach to identifying and repairing likely failing vehicles.

### **Benefits**

Excepting the 5<sup>th</sup> and 6<sup>th</sup> model year vehicles from the Smog Check program saves consumers as estimated \$33 million dollars per year. Implementing a program that identifies vehicles that would potentially fail the emission test will provide the additional emission reduction benefits while maintaining a lower overall cost of emission reductions. According to BAR test data, the average Smog Check failure rate for 5<sup>th</sup> and 6<sup>th</sup> model year vehicles is 5%. As a result, the majority of motorists could benefit from the cost savings on an emissions test. It is worth noting that the extra funding for the Carl Moyer Program provides additional reductions of NOx and particulate matter that more than offsets the 4 tons per day lost as a result of the 5<sup>th</sup> and 6<sup>th</sup> model year exceptions and at a cost per ton that is significantly less.

## **Recommendations**

Pursuant to the authority granted to BAR by SB1107 (stats. 2004, chap. 280, § 7), the IMRC recommends that BAR and ARB develop a methodology to identify and “call-in” any 6 year and newer model year vehicles for a Smog Check inspection if they are identified as possible high emitters. The identification methodologies could include the following:

1. Remote sensing devices used on California’s roadways to identify vehicles that are potentially high emitters;
2. Data gathered through BAR’s roadside testing activities that suggests a specific make or model vehicle may have a high probability of failing the emissions test;
3. Data gathered as a result of the ARB’s vehicle surveillance program; or
4. Specific make and models of vehicles identified as possible high emitters using BAR’s Vehicle Information Database.

## **ARB/BAR REPORT RECOMMENDATION #2**

The ARB/BAR Report recommends the elimination of the 30-year rolling exemption and replacing it with an exemption for pre-1976 model year vehicles.

## **Issues**

1. SB42 (stats. 1997, chap. 801, §1) created the 30-year rolling exemption.
2. The IMRC supports the elimination of the 30-year rolling exemption.
3. Eliminating the 30-year rolling exemption reduces emissions by 5.7 tons per day in 2010.
4. Eliminating the 30-year rolling exemption may impact lower income families who own older model year vehicles.

## **Background**

1. SB42 (stats. 1997, chap. 801, §1) created the 30 year rolling exemption. The bill initially exempted all pre 1974 model year vehicles from the Smog Check requirement effective January 1, 1998. Beginning January 1, 2003, the bill exempted any motor vehicle 30 model years old or older from the Smog Check requirement.

Under the provisions of SB 42, another model vehicle exits the program each year, subjecting Californians to more air pollutants than necessary. On January 1, 2004, the rolling exemption automatically removed 44,420 higher polluting vehicles from the Program. On average, each of these vehicles emits as much pollution as approximately 18 - 22 new cars.

2. The IMRC supports eliminating the rolling exemption from the Program for light duty vehicles with model years that are 30 years old or older. SB 42 enacted this exemption in 1997, along with an exemption for all pre-1974 vehicles. Prior to that time, only pre-1966 and older model years had been exempt from the Program.

In the 2000 ARB/BAR Evaluation of the Smog Check Program, the agencies recommended that the 30-year rolling exemption be deleted from the law. Again in the 2004 ARB/BAR Report, the agencies recommended repealing the 30-year rolling exemption. The agencies have also presented information about the air

quality benefits of repealing the exemption for 1967-1973 vehicles. The emissions reductions gained by repealing the exemption would be significant over time.

After hearing substantial testimony on the issue at the May 29, 2003 IMRC meeting, the Committee adopted a resolution recommending to the Governor and State Legislature, that the 30-year rolling exemption be repealed and replaced with a pre-1976 model year exemption. The Committee recognizes the greater emission benefit of the pre-1967 model year exemption, but also the considerable consumer impact of reimposing a requirement that was previously lifted.

3. The potential for emission reductions is significant. Retaining the 1976 and newer model year vehicles in the Program provides 5.7 tons per day of emissions reductions statewide in 2010. Eliminating the rolling exemption reduces emissions by .6 tons per day of ozone precursors in the San Joaquin Valley alone.
4. The Committee also considered the consumer impact of freezing the rolling exemption. For lower income families, the Consumer Assistance Program is available with the Smog Check program and provides a simple \$20 co-pay approach for needed emissions related repairs. In addition, applications are available in English and Spanish and are available at authorized Smog Check inspection stations or from the Bureau of Automotive Repair's (BAR) website.

### **Concerns**

Opponents to the bill indicated that parts aren't available to perform repairs. They also stated that older vehicles aren't driven many miles and often are collector vehicles that are only displayed at car shows. They also stated that Smog Check testing of older vehicles imposes requirements that they weren't designed to meet.

The IMRC found that the BAR has a procedure for locating parts or granting waivers when parts are not available. The IMRC also discovered that the Department of Motor Vehicles (DMV) and BAR databases of registered vehicles in California indicates that older vehicles are used on the road in regular service and are not simply collector vehicles. The basis for ARB's estimates on the number of vehicles in each vehicle model year and the vehicle miles traveled by vehicles in each model year is reasonable. The Smog Check inspection standards are no more stringent than those originally required by the ARB or United States Environmental Protection Agency when the vehicle was originally manufactured and even accounts for reasonable deterioration. The IMRC also found that regular Smog Checks are an incentive to many vehicle owners to maintain their vehicles in good working condition which reduces emissions.

### **Benefits**

California must use every cost effective measure possible to meet federal air quality standards. The 1994 State Implementation Plan (SIP) commitments, the 2003 South Coast SIP, and anticipated SIP commitments for San Joaquin and Sacramento, mean greater emission reductions must be achieved from the program in order to achieve clean air goals.

As previously mentioned, retaining the 1976 and newer model year vehicles in the Program reduces HC and NOx emissions by 5.7 tons per day by 2010.

In addition, cars are more durable, and this means that they are contributing more emissions for a longer period of time than was anticipated in 1997 when the Legislature adopted the rolling 30-year exemption. ARB's extensive motor vehicle emissions inventory update of 2000-2002 demonstrated that the light duty emission inventory is greater than was anticipated in 1997, with a larger contribution from older cars.

### **AB 2683 of 2004**

AB 2683 was introduced in January, 2004 and sent to the Governor in September 2004. It repeals the rolling 30-year exemption from the Smog Check program. Specifically, the bill:

1. declares the Legislature's intent that vehicles of the 1975 model year and older (1974, 1973, etc.) shall be permanently exempted from Smog Check requirements and to ensure that the DMV and DCA be afforded adequate time to implement the bill's requirements;
2. repeals the exemption for vehicles 30 years old or older from vehicle maintenance and inspection programs, effective April 1, 2005;
3. continues the exemption from Smog Check program provisions for vehicles that were manufactured prior to the 1976 model year (1975 model year and older), effective April 1, 2005;
4. exempts from the visual and functional portion of the Smog Check program "collector motor vehicles," as defined; and,
5. makes corresponding changes to related provisions.

The bill defines "collector motor vehicle" as a vehicle that meets all of the following criteria:

1. submission of proof that the motor vehicle is insured as a collector motor vehicle, as shall be required by regulation of the bureau;
2. the motor vehicle is at least 35 model years old; and
3. the motor vehicle complies with the exhaust emissions standards for that motor vehicle's class and model year as prescribed by the department, and the motor vehicle passes functional inspection of the fuel cap and a visual inspection for liquid fuel leaks.

The Governor signed AB 2683 on September 23, 2003.

### **ARB/BAR REPORT RECOMMENDATION #3**

The ARB/BAR Report proposes the implementation of an annual inspection for 15 year and older model year vehicles.

#### **Issues**

1. The Smog Check inspection failure rate averages 30% for vehicles 15 years old and older, double the average failure rate for newer model year vehicles.
2. Annual Smog Check inspections for older model year vehicles would reduce hydrocarbon and NOx emissions by approximately 25 tons per day.
3. The Report suggests that annual inspections increase inspection and repair costs by approximately \$173 million annually for older model year vehicles and are often driven by those that can least afford additional Smog Check inspection and repair costs.

#### **Background**

1. The Report indicates that Smog Check inspection failure rates increase as vehicles age and the emission systems deteriorate. The failure rate for all model year vehicles equals about 16%. By the time vehicles reach 15 years of age, the failure rate increases significantly and averages 30% with some early 1980 model year vehicles reaching as high as a 40% failure rate.
2. Assuming the 30-year rolling exemption remained intact, the ARB/BAR Report estimates that annual testing of older model year vehicles would reduce emissions by 25 tons per day of hydrocarbons and NOx in 2005 and 27.4 tons per day by 2010. This estimate assumes that 1981 and older model year vehicles would be exempted by 2010 due to the 30-year rolling exemption.

However, AB2683 (stats. 2004, chap. 704, §2) eliminates the 30-year rolling exemption and instead, mandates that all 1976 and newer model year vehicles be included in the Program. Therefore, the inclusion of 1976 – 1981 model year vehicles in the Program would presumably increase these projected emission reductions by 2010.

3. The ARB/BAR Report estimates that the Smog Check inspection and repair industry would inspect an additional 2.2 million vehicles annually at a cost of approximately \$101 million, assuming an average inspection cost of \$46.00 (based on 2002 DCA/BAR data). In addition, the ARB/BAR Report also indicates a failure rate of about 23%, which is projected to add another \$72 million in repair costs bringing total costs to \$173 million annually. This equates to a cost effectiveness of \$8,500 per ton for hydrocarbons and NOx emission reductions. On average, older model year vehicles are typically owned and driven by those that can least afford the additional costs since they have little in the way of discretionary spending. This presents an additional obstacle for an annual testing program since much of the increased costs would be borne by those than can least afford the additional expense.

#### **Proposal**

The IMRC recognizes the significant benefits posed by the addition of an annual Smog Check inspection for older model year vehicles, but also understands the need to balance the benefits with other provisions that



lessen the burden on those that can least afford the additional expense. Therefore, the addition of the annual Smog Check inspection should include increased funding for the Consumer Assistance Program (CAP).

Annual inspections increase the sale of BAR's Certificates of Compliance by approximately 2.2 million certificates each year. At the current price of \$8.25 each, BAR's income increases by approximately \$18 million annually. Normally, these funds would be deposited into the BAR Vehicle Inspection and Repair Fund. Since these are additional funds, we suggest that they be deposited into the High Polluter Repair and Removal Account. This increases the funding available to assist lower income consumers with their repair needs during the annual Smog Check inspection.

In addition to the certificate sales, the IMRC also suggests that any loan repayment by the Legislature of funds borrowed to cover the General Fund deficit, also be deposited directly into the High Polluter Repair and Removal Account for use by CAP. For more detail on this provision, please refer to the document entitled "BAR Funding" in this report. In order to further reduce the economic burden on the owners of these cars and improve consumer convenience, these vehicles could also be directed to Gold Shield stations where they could also receive CAP repairs in the event they fail the Smog Check inspection, providing the owner meets the income eligibility requirement for CAP.

Finally, the ARB/BAR Report suggests a possible adjustment to the 15-year and older rule in future years due to the improved emission systems on vehicles beginning with the 1996 model year. However, the IMRC suggests that further study is required to confirm this improved emission durability before extending any exemption to the 15 year and older model year vehicles.

### **Options**

Since a significant portion of 15 year and older model year vehicles pass the Smog Check inspection, the IMRC also agrees with the ARB/BAR Report that some older model year vehicles should be excused from the annual testing requirement. One way to target an annual inspection program more effectively is to allow owners of cleaner emitting vehicles to opt out of the annual inspection and continue to be tested biennially. This provision could be accomplished by using several available options

## Clean Screen

The concept of “clean screening” vehicles can be accomplished using several methods of identifying vehicles likely to pass the Smog Check inspection. One method, referred to as the Low Emitter Profile uses various vehicle data to classify or rank vehicles according to their probability of passing the test. Once the vehicles have been ranked, then only the “most likely to pass” vehicles would be excepted from the annual inspection.

Another method involves the use of remote sensing devices. These devices are set up on city streets or highways to measure tail pipe emissions as the vehicle drives through the lane. The motorist is not required to stop and submit to any inspection since the device captures multiple measurements of the tail pipe emissions while the vehicles moves through the test lane. Vehicles identified as low emitters through the remote sensing lanes could be excused from the annual Smog Check inspection requirement. It is worth noting that BAR and ARB are jointly evaluating remote sensing devices for possible application in the Smog Check program.

## Past Performance

Another method for excepting vehicles from the annual inspection would be to allow vehicle owners to demonstrate that their vehicle passes the Smog Check inspection for 2 or 3 consecutive cycles and subsequently except them from the next annual inspection. If their vehicle continues to pass the biennial Smog Check inspection, as identified in BAR’s Vehicle Information Database, then their vehicle may be excepted from the annual inspection requirement.

## Modified Annual Inspection Process

AB2683: (stats. 2004, chap. 704, §2), provides for a modified Smog Check inspection for classic cars (e.g., vehicles over 35 years old that meet specific requirement). The modified inspection eliminates the visual and functional portions of the Smog Check inspection and requires only a tail pipe emissions test and a visual inspection for liquid fuel leaks. The visual inspection requires that the technicians visually inspect and identify specific emissions components to check for equipment tamperers. The functional test requires physical testing of the gas cap, Malfunction Indicator Light, exhaust gas recirculation valve, ignition timing to confirm proper operation. However, defective fuel evaporative emission components would not be identified using this modified test procedure. Therefore, this may be the least desirable of the available options

## **Concerns**

The IMRC is concerned that the annual inspection impacts lower income individuals who are forced by circumstances to use older model year vehicles often in a poor state of repair. Any additional financial burden on this segment of society would be difficult to implement politically no matter what the apparent benefit in terms of emission reductions. Since the ARB/BAR Report estimates the annual cost at \$173 million for test and repair costs, we believe that this program requires additional funding for CAP to offset the financial impact on lower income families.

## **Benefits**

Implementing the annual Smog Check inspection for vehicles 15 years and older increases the program’s emission reductions by 25 tons per day in 2005 and even more in future years which assists the state in achieving air quality goals. The additional funding for CAP could ameliorate the negative impact that such a

program may have on lower income families. Using the additional Certificate of Compliance fees for CAP repairs generates approximately \$18 million that will pay to repair 58,000 vehicles; assuming a CAP repair averages \$313 per vehicle.

Implementing a “clean screen” process by which some vehicles are excused from the annual Smog Check inspection provides an additional benefit by reducing the overall financial impact. As an example, excusing the cleanest 25% of the older model year vehicles would reduce the annual cost by approximately \$25 million in testing fees.

## **Recommendations**

The IMRC recommends that the Legislature adopt a statutory change that provides the following:

1. Authorizes the BAR to implement an annual Smog Check inspection for older model year vehicles.
2. Provides BAR some flexibility in identifying the appropriate model year vehicles required to be annually inspected.
3. Require that the additional Certificate of Compliance fees be deposited into the High Polluter Repair and Removal Account.
4. Require that BAR develop a methodology to excuse older model year vehicles least likely to fail the Smog Check inspection.
5. Require that vehicles subject to the annual inspection qualify for Consumer Assistance Program repairs providing the vehicle owner meets the income eligibility requirements.

## **ARB/BAR REPORT RECOMMENDATION #4**

The ARB/BAR Report proposes the implementation of an annual inspection for all high mileage vehicles that travel more than twice the average miles per year.

### **Issues**

1. High mileage vehicles, such as taxicabs, travel as much as four times the average miles per year as other passenger cars.
2. Annual testing of High Mileage Vehicles could remove 23 tons per day of hydrocarbon and NOx emissions and as much as 102 ton per day of carbon monoxide emissions.
3. High mileage vehicles are difficult to identify.
4. SB1107 (stats. 2004, chap. 280, § 7) excepts 5<sup>th</sup> and 6<sup>th</sup> model year vehicles which complicates this recommendation.

## **Background**

1. To evaluate the emissions impact of High Mileage Vehicles, the ARB conducted a study of taxicabs in the Los Angeles and San Francisco areas in 2002. The study concluded that the average taxicab traveled 58,000 miles in 2002; almost 4 times the average miles traveled for passenger vehicles. ARB conducted approximately 1,600 inspections on these vehicles and found about 27% with some type of failure. Failures were identified as one or more of the emission control system components that were non-operational due to deterioration or tampering. In contrast, the failure rate for other 1992 – 2002 model year passenger cars averaged about 5%, 22% lower than the taxicab fleet.

2. Using the taxicab fleet for a controlled study, ARB concluded that annual inspections of the taxicab fleet could produce emission reductions of 0.8 tons per day of HC and NO<sub>x</sub> and 3.7 ton per day of carbon monoxide emissions. The ARB/BAR Report also concluded that approximately 3% of the California vehicle fleet falls into the high mileage category that is defined as more than 25,000 miles per year. Therefore, if all high mileage vehicles receive annual Smog Check inspections, the emission reduction benefits could total 6 tons per day of hydrocarbons, 17 tons per day of NO<sub>x</sub>, and as much as 102 tons per day of carbon monoxide. It should be mentioned that this is an upper bound for potential benefits. High mileage vehicles include taxicabs, private and government owned fleets and individually owned vehicles that meet the high mileage definition.
3. Most municipalities (cities and counties) identify taxicabs in their local jurisdictions, but the DMV has no data available that indicates a vehicle is used as a taxicab. Government fleets could be required to report mileage on these vehicles. A similar identification problem exists with privately owned fleets and individual owners of high mileage vehicles since only the odometer indicates vehicle miles and this data is not transferred to the DMV except on change of ownership.
4. SB1107 (stats. 2004, chap. 280, § 7) excepts the 5<sup>th</sup> and 6<sup>th</sup> model year vehicles from the biennial Smog Check requirement. Therefore, early identification of potential high mileage vehicles becomes impossible until the vehicle reaches seven years old and requires its first Smog Check inspection.

### **Proposal**

The IMRC agrees with the recommendation to implement an annual test procedure for high mileage vehicles unfortunately, vehicle identification appears to create a significant obstacle to this proposal. Therefore, we recommend that BAR, in cooperation with the DMV and ARB, develop a high mileage vehicle identification protocol to select vehicles that travel more than twice the number of miles per year of the average passenger car or light duty truck. The identification should include taxicabs, privately owned fleets, government fleets (such as police cars), and privately owned vehicles.

Since the ARB/BAR Report estimates a 27% failure rate for high mileage vehicles, BAR should develop a methodology to exempt some vehicles from the annual Smog Check inspection requirement and instead, send only those likely to fail the inspection.

As an option, new technologies could be used in lieu of an annual inspection that could provide similar emission benefits. One such technology is called Networkcar™, which requires that a telematics device be installed in the vehicle and connected to the vehicle's computer controlled emission system. When the computer control system identifies an emissions related problem, a message could be sent to BAR indicating an emissions related defect that requires the vehicle owner to have the vehicle repaired. The same system also sends information to BAR upon completion of successful emission related repairs. The use of this system could eliminate the need for an annual inspection while ensuring that the vehicle remains in emissions compliance.

### **Concerns**

The IMRC's primary concern involves the inability of BAR or DMV to identify high mileage vehicles. Although many of these vehicles display commercial license plates issued by DMV, this information in and of itself does not identify the vehicle as high mileage.

In addition, some of the high mileage vehicles include commuters that may drive as much as 200 miles per day to commute to and from work. The annual inspection would place an additional burden on this segment of society (although some would qualify for the CAP which minimizes the negative impact).

## **Benefits**

Adding the annual Smog Check inspection for high mileage vehicles could provide additional emission reductions of 23 tons per day of hydrocarbon and NOx and 102 tons per day of carbon monoxide at an estimated cost of less than \$10,000 per ton. Including a methodology to excuse some vehicles from the annual inspection requirement may improve the cost effectiveness. The additional option of using newer technologies such as Networkcar™ may also provide a low cost alternative while ensuring that these vehicles maintain low emissions.

## **Recommendations**

The IMRC recommends that the Legislature adopt a statutory change that provides the following:

1. Authorizes BAR to implement annual Smog Check inspections for any vehicle identified as a high mileage vehicle.
2. Identifies high mileage vehicles as vehicles traveling twice the mileage of the average passenger car.
3. Include private vehicle fleets, government fleets, and individually owned vehicles in the high mileage annual inspection.
4. Allows the use of new technologies in lieu of annual inspections.
5. Authorizes Consumer Assistance Program paid repairs for motorists meeting the income eligibility requirements.

## **ARB/BAR REPORT RECOMMENDATION #5**

The ARB/BAR Report proposes increased funding to restore enforcement positions and subsequently improve station performance. This recommendation also requests a specialized prosecution unit within the Attorney General's office and dedicated Administrative Law judges within the DCA to conduct hearings associated with disciplinary actions taken by DCA/BAR. .

## **Issues**

1. Due to the States budgetary constraints and the previously lifted hiring freeze, the BAR has lost a significant number of enforcement positions.
2. Preparation and serving of an accusation by the Attorney Generals office may take as much as 8 - 12 months.
3. The demand for Administrative Law Judges is such that they are continually backlogged.
4. SB1542 (stats. 2004, chap. 572, §2) requires that the Director of the Department of Consumer Affairs appoint a Bureau of Automotive Repair enforcement monitor no later than January 1, 2005.

## **Background**

1. Since 2001, BAR has lost almost 28 full time Program Representatives positions in the enforcement division and at the same time, they have increased their enforcement activity against licensed stations. Among other things, Program Representatives are responsible for complaint investigation and resolution, conducting station inspections, counseling Smog Check station owners and

technicians when found lacking in expertise or procedural requirements, and initiating investigations of suspected fraudulent activity.

Although BAR enforcement resources have decreased, the number of Smog Check stations has remained about the same over time. In addition, BAR has expanded the enhanced areas of the State which increases enforcement workload due to additional Smog Check station inspections.

2. BAR relies on the Licensing Section of the Civil Division of the Attorney General's (AG) office for both preparation of formal accusations and the legal representation in the adjudication of administrative actions. The Licensing section of the AG's office consists of 100 Deputy Attorneys General and represents 34 State agencies.

Unlike other services for which BAR pays pro-rata, BAR pays the AG on a fee for service basis. In the 2003/2004 fiscal year, that amounted to over \$2 million. According to the Report to the Joint legislative Sunset Review Committee, 2003, the AG filed 379 Accusations/Petitions to Revoke Probation against Smog Check stations in the 2001/2002 fiscal year. In contrast, the AG's office filed a total 3,000 administrative actions on the part of the 34 State agencies. This has resulted in an average 7.5 months backlog of Smog Check cases awaiting the drafting and filing of accusations.

3. The Office of Administrative Hearings (OAH) employs 53 independent Administrative Law Judges (ALJ) to conduct hearings for over 100 State and 500 local government agencies. The ALJ presides over the hearings renders a judgment based on the evidence presented by the AG and the defendant. Currently, there is a 13.5-month backlog of cases filed with the Office of Administrative Law. Therefore, the time required to fully adjudicate a Smog Check case from the time the accusation is filed with the AG and heard by an ALJ totals 21 months.
4. SB1542 (stats. 2004, chap. 572, § 2) requires that the Director of the Department of Consumer Affairs appoint a Bureau of Automotive Repair enforcement monitor by January 1, 2005. The enforcement monitor duties include researching and analyzing the following:
  - The appropriate authorization for, accuracy of, and consistency in, the application of sanctions or discipline imposed on licensees or registrants;
  - The viability and fairness of procedures available to licensees and registrants to respond to allegations of violations prior and subsequent to formal and/or other disciplinary actions being taken;
  - The accessibility, fairness, and independence of the appeals process for licensees and registrants at all levels of the disciplinary process, including

procedures to respond to allegations before and after formal and/or other disciplinary actions are taken;

- The prioritization of investigatory and prosecutory resources, particularly with respect to cases involving significant consumer harm;
- The adequacy and expertise of bureau staff in accepted industry standards, practices, and the applicable state and federal laws;
- The effectiveness of the Bureau's Industry Ombudsman and Advisory Committee, particularly in relation to their communication with licensees, registrants, and the public;
- The effectiveness of the bureau's cooperation with other governmental entities charged with enforcing federal laws and regulations regarding automotive repair dealers and smog check stations and technicians;
- The creation of a statutory definition of the term "fraud";
- The establishment of formal diagnostic and repair standards;
- The licensing or registration of technicians working within the various fields of automotive repair;
- The establishment in regulation of a formal code of conduct for automotive repair dealers and technicians; and
- The quality, consistency, and speed of complaint processing and investigation, and recommendations for improvement;

Statute further requires that the enforcement monitor complete a preliminary report to the Legislature no later than July 1, 2005 and subsequent reports every 6 months thereafter. A final report is due prior to December 1, 2006 and the enforcement position expires no later than April 1, 2007, unless that provision is repealed by the Legislature.

### **Conclusion**

Due to the passage of SB1542 and the comprehensive detail required of the enforcement monitors report, the IMRC believes it would be premature to comment on this provision of the ARB/BAR Report. Therefore we will withhold any recommendation on this topic at this time and instead, wait for the report from the DCA enforcement monitor.

### **ARB/BAR REPORT RECOMMENDATION #6**

The ARB/BAR Report proposes a change in state law that would provide the authority to include a smoke test component in the Smog Check inspection.

### **Issues**

1. The current Smog Check program does not test for tail pipe smoke.
2. Driving a smoking vehicle violates Section 27153 of the California Vehicle Code (CVC).
3. Clearing a citation for violation of Section 27153 of the CVC requires a simple visual inspection by a law enforcement officer.

## **Background**

1. The current Smog Check inspection does not require a test that inspects for excessive tail pipe smoke. Due to the chemical composition of the smoke, the Emissions Inspection System used in Smog Check stations, cannot measure smoke that results from a vehicle burning excessive amounts of oil. Therefore, it is possible for a smoking vehicle to be issued a certificate of compliance after passing a Smog Check inspection and yet continue to pollute the air with harmful emissions that include particulate matter. Section 27153 of the California Vehicle Code (CVC) provides in pertinent part that “No motor vehicle shall be operated in a manner resulting in the escape of excessive smoke, flame, gas, oil, or fuel residue.”
2. In the 2003 calendar year, the California Highway Patrol (CHP) issued 1,400 citations for violation of §27153 of the CVC. It should be noted that CHP officers issue these citations only if the vehicle smokes continuously and not just on acceleration. California is home to more than 116 local police departments and over 50 county Sheriffs departments. Therefore, it is reasonable to assume that local county and police agencies issue additional citations for violations §27153 of the CVC, but the IMRC was unable to collect this data.
3. Clearing these citations requires only that the vehicle be returned to a local police officer for a visual verification that the vehicle is no longer smoking. Unfortunately, the vehicle’s compliance may be disguised through temporary repairs using a variety of methods. Lacking any verification of repair such as an invoice from an automotive repair shop or parts supplier, the offender may clear the citation and continue to drive a polluting vehicle.

### **Nevada’s Smoke Test**

As a means of reducing particulate matter, certain counties of Nevada have included a smoke test in their inspection and maintenance program for many years. Specifically, Chapter 14 of Nevada’s Department of Motor Vehicles 1G *Emissions Inspectors Handbook* defines a visible smoke test failure as: “any visible smoke from the tailpipe or crankcase of a motor vehicle during the emission test.” Consequently, any smoke identified by the technician causes the vehicle to fail the emissions test.

Nevada’s smoke test has identified a substantial number of vehicle failures. For example, during the 2003 calendar year, emission inspectors in Washoe County performed 188,600 tests on 1976 – 1995 model year vehicles. 920, or approximately 1.0 percent of these vehicles were identified as having excessive smoke. The Clark County program netted similar test results in 2003 with a 0.89% failure rate after testing 373,725 vehicles.



## **Proposal**

Using Nevada's test procedure as a model, BAR could develop a simple process for technicians to implement a visible smoke test procedure. In the event the motorist disagrees with the Smog Check technician's finding of excessive smoke, the vehicle would then be referred to the State's Referee (Referee) system for resolution. The Referee system currently offers this type of service to consumers who dispute the results of an emissions inspection.

Under the terms of this proposal, only a Referee inspector would be authorized to sign-off or clear a citation for excessive smoke. Restricting the clearing of an excessive smoke citation to Referee inspectors is prudent public policy because most law enforcement officers may not have sufficient training or expertise in the repair of motor vehicles.

It is worth noting that during the September 28, 2004 meeting of the IMRC, a representative of the BAR indicated that they would agree to a subjective type of smoke test as a component of the Smog Check inspection.

## **Concerns**

As mentioned before, the smoke failure rate for Nevada averages approximately 1% of the emissions tests conducted. In contrast, the ARB/BAR Report estimates that approximately 200,000 vehicles spew excessive smoke. Based on the number of tests performed in 2003 for 1975 – 1999 model year vehicles, that equals about a 2% failure rate. California has never imposed a smoke test procedure in the Smog Check inspection procedure and, therefore, the failure rate may be higher for the first cycle of testing.

The addition of a smoke test conceivably increases the amount of time required to conduct a Smog Check inspection. Therefore, Smog Check stations may initially increase the inspection price by \$1 - \$2 per inspection as has occurred for previous additions to the testing procedure. As Smog Check technicians gain experience in the new procedure, the price invariably decreases due to market pressures. Under the provisions of §44062.1 of the Health and Safety Code, many of these motorists would be eligible for the Consumer Assistance Program, which defrays the additional costs to the consumer.

## **Benefits**

According to the ARB/BAR Report, approximately 200,000 gasoline-powered vehicles spew excessive smoke, which may account for as much as 1.6 tons per day of particulate matter. The reduction of these particulates assists the state in complying with the air quality goals. Furthermore, adding a visible smoke provision to the existing Smog Check program also assists law enforcement with ensuring that motorists comply with §27153 of the CVC.

## **Recommendations**

The Committee recommends that the Legislature adopt statutory changes to both the Health and Safety Code and the California Vehicle Code that provides for the following:

1. Authorizes the BAR to implement a “subjective” smoke inspection procedure as a component of the Smog Check inspection procedure.
2. The smoke inspection procedure should not require additional equipment purchases by Smog Check stations since it will be a subjective test that relies exclusively on the technician’s observations of the exhaust.
3. Include a provision that requires the Referee to perform a Smog Check inspection on any motorist’s vehicle that receives a citation for violation of §27153 of the CVC. The inspection should be conducted subsequent to repairs and prior to resolution of the citation.
4. Require that the vehicle owner provide some proof of repair at the time of the Referee appointment. This could include either a parts invoice from an automotive parts supplier or a repair invoice from an automotive repair shop.

## **ARB/BAR REPORT RECOMMENDATION #7**

The ARB/BAR Report proposes that vehicles two years old or less be exempted from the change of ownership Smog Check inspection.

## **Issues**

1. The ARB/BAR Report projects that consumers would save \$15 million annually by exempting 2 year and newer model year vehicles from the change of ownership Smog Check inspection.
2. Smog Check stations lose the same amount in testing fees in addition to any emission related repairs.
3. The change of ownership Smog Check provides consumers with protection from fraud.
4. OBD II and Program changes led to an increased failure rate beginning in 2003.
5. SB1107 (stats. 2004, chap. 230, §7) exempts all 4 year and newer model year vehicles from the change of ownership inspection.

## **Background**

1. The ARB/BAR Report projects saving consumers approximately \$15 million annually by exempting approximately 330,000 2-year and newer model year vehicles from the change of ownership Smog Check requirement. These annual savings assume an average test cost of \$46.00.
2. The \$15 million saved by consumers is a loss of income for Smog Check station owners plus any related repair income generated from the emission test failures. Assuming a statewide repair cost average of \$154, loss of repair income is estimated at approximately \$1.4 million annually based on the BAR’s Executive Summary for the 2003 calendar year. The change of ownership inspection is not required when transacting a vehicle purchase or sale with a family member.
3. The ARB/BAR Report appears to indicate that these vehicles have a low failure rate. However, the change of ownership requirement is also a consumer protection mechanism. In other words, this requirement protects the consumer from unknowingly purchasing an illegally modified or high polluting vehicle. In

addition, leaving the consumer unprotected means that a vehicle could be sold to an unsuspecting consumer and they would never know a problem existed until the vehicle received a Smog Check inspection several years from the time of purchase. This could result in expensive repair costs to bring the vehicle into compliance with the Smog Check emissions standards when the vehicle eventually requires a Smog Check inspection.

#### 4. OBD II and New Inspection Requirements

The IMRC considered that the availability of the On-Board Diagnostic II (OBD II) system might alleviate the problem that could result from this exception. However, there are simple ways to circumvent the OBD II technology. In order to fully understand the problem potentially created by this proposed exemption, it is important to understand how the OBD II system works. To comply with new enhanced emission control and emissions compliance standards, the California Air Resources Board required most 1996 and newer passenger vehicles sold in California to be equipped with numerous on-board emissions diagnostic systems known as OBD II. These systems are capable of performing tests on the vehicle's computer controlled emission systems and alert the driver when a problem is detected via a Malfunction Indicator Light (MIL).

These tests are referred to as readiness monitors (monitors) and are typically executed when the vehicle is driven under a specified set of driving conditions. It is important to note that if these monitors are reset (e.g. as a result of the automotive technician clearing diagnostic trouble codes or the removal of power from the on-board computer by briefly disconnecting the battery), the vehicle must be driven through a very specific set of driving conditions that allows the monitors to run to completion once again to check for emission system defects.

##### New Smog Check Inspection Requirements

Effective November 12, 2002, BAR implemented the OBD II component of the Smog Check program. This new component requires that the Smog Check technician connect the vehicle's computer to the BAR 97 Emission Inspection System (EIS) via a data link connector. The EIS, following a preprogrammed set of instructions, checks the vehicle's on-board computer to determine if the OBD II system identified any malfunctions and also to ensure that all monitors have run to completion.

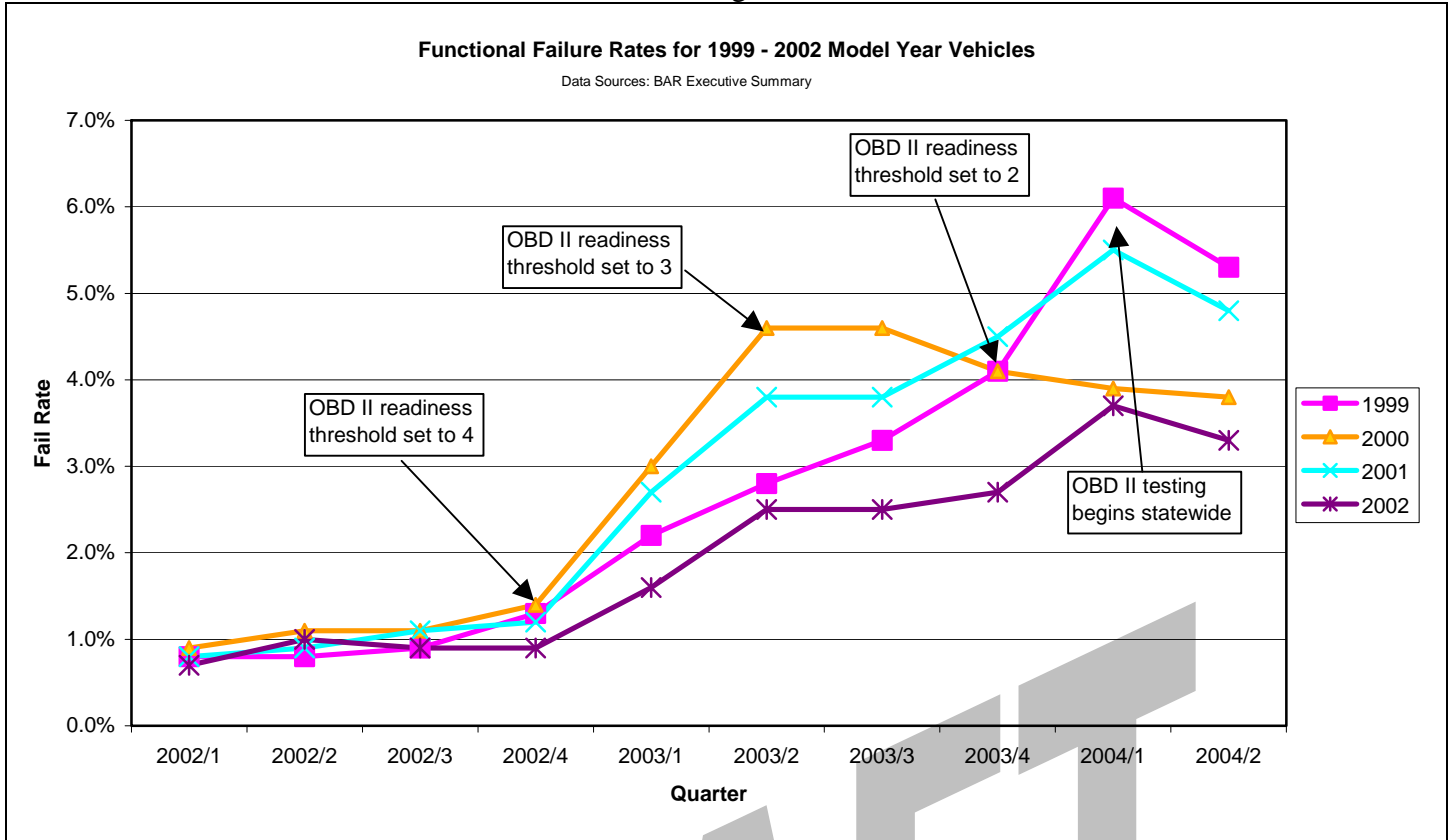
When BAR initially implemented the OBD II component, vehicles were allowed to have as many as five monitors that had not run the test through to completion. Consequently, very few vehicles failed the test for the OBD II functional test. As

indicated below, BAR gradually reduced the number of monitors allowed to be “not ready”:

1. January 15, 2003 – OBD II readiness threshold set to 4
2. April 15, 2003 – OBD II readiness threshold set to 3
3. December 9, 2003 – OBD II readiness threshold set to 2

Since the ARB/BAR Report used only 2002 Smog Check data and did not project the impact of subsequent program changes, we believe the impact identified in the ARB/BAR Report would be lower than current reality. Figure 1 illustrates the impact of program changes on the OBD II failures for model years 1 through 4 beginning with the first quarter of 2002. As indicated in the graph, functional failure rates were less than 2% in the fourth quarter of 2002 for vehicles four years old and newer. However, the graph also illustrates that the failure rates increased significantly as the OBD readiness threshold was decreased. Consequently, the exemption of these vehicles from the change of ownership inspections will have a significantly larger impact on the consumer than projected in the ARB/BAR Report. It should be noted that the ARB/BAR Report only reports failures rates for 2 year and newer model year vehicles while Figure 1 reports failure rates for 4 year and newer vehicles. However, the failure rates for all 4 year old and newer model year vehicles increased as the readiness threshold decreased.

Figure 1



5. Although the ARB/BAR Report suggests exempting the change of ownership inspection for 2 year and newer model year vehicles, SB1107 (stats. 2004, chap. 230, §7) exempts all 4 year and newer model year vehicles from the change of ownership inspection. Using the newest failure rates available from BAR's Executive Summary (2<sup>nd</sup> Quarter 2004), the failure rate for this class of vehicle averages 4.0%, which is significantly higher than the failure projected in the ARB/BAR Report. Even using the average failure rate for 2 year and newer model year vehicles, the recent program changes for the OBD II monitor threshold increases the failure rate to 3.4%.

With the passage of SB1107 (stats. 2004, chap. 230, §7), 4 year and newer model year vehicles will be exempt from the change of ownership inspection effective January 1, 2005. Since the majority of failures stem from emission system failures, which should be identified by OBD II, the burden placed on unsuspecting vehicle buyers could be alleviated by a functioning MIL. However, if the MIL is inoperative, disconnected, broken, or the OBD II system is reset by an

unscrupulous seller, then the buyer could be subjected to significant repair costs once the system completes the on-board tests and subsequently illuminates the MIL and is eventually tested. Assuming that the failure rate remains similar to the failure rates indicated in BAR's Executive Summary for the second quarter of 2004, then the cost to consumers for repairs that were not anticipated when they purchased the vehicle could be as much as \$5.9 million annually. Moreover, the OBD II repair cost could exceed the average statewide repair cost since these systems require a more sophisticated diagnostic procedure and subsequent system repairs. Therefore, the elimination of the change of ownership Smog Check inspection could increase the burden on consumers.

The nature of how the OBD II system operates allows unethical sellers to offer vehicles that would fail the Smog Check inspection due to MIL illumination by simply disconnecting the battery terminal on the vehicle. Removing power clears any diagnostic trouble codes and extinguishes the MIL. Another way to circumvent the system would be to disconnect or remove the MIL. However, if the vehicle were subjected to a Smog Check inspection, the inspection process would detect this flaw since the monitors would not yet be run to completion. The abolition of the change of ownership inspection makes the motorist easy prey for any deceitful person or dealer selling vehicles. The IMRC acknowledges that a significant number of OBD failures result simply from the OBD II system indicating "not ready". However, the Vehicle Information Database does not distinguish between simply not ready and a system malfunction.

More importantly, when the vehicle requires a Smog Check inspection at 7 years of age, if the vehicle has any tampered emission control systems or modifications, then the vehicle will not only fail the Smog Check inspection, but the motorist will have no financial relief. Neither the \$450.00 cost limit nor the Consumer Assistance Program apply to vehicles with tampered emission control systems. This extra burden could cost unsuspecting motorists thousands of dollars in unanticipated repair bills to bring the vehicle into compliance with the Smog Check program.

Another important issue stems from the statutorily required emission control warranty that protects the consumer for 3 years or 50,000 miles, whichever occurs first. Since the provisions of SB1107 eliminates the need to perform a Smog Check inspection upon change of ownership, many manufacturers emission warranties may expire before a 3 or 4-year-old vehicle is subjected to a Smog Check inspection. This exposes the consumer to unnecessary costs since some of the emission failures would have been detected during the Smog Check inspection and therefore covered by the emissions warranty. The ARB/BAR Report also states that owners of vehicles with OBD II related failures (e.g. MIL is illuminated) are

expected to respond by seeking repairs at the dealership. However, research conducted by the National Center for Vehicle Emission Control and Safety indicates that a majority of drivers either do not know the significance of the MIL or have a tendency to ignore it since they suspect that a cost may be involved in repairs.

### **Proposal**

The IMRC understands that emissions reduction for these model years vehicles is costly however, the consumer protection aspect cannot be overlooked when calculating the costs. Therefore, the IMRC suggests a compromise to SB1107 which would exempt 3 year and newer model year vehicles from the Smog Check inspection but requires 4 year and older to be inspected at the time of sale.

### **Concerns**

Some 3-year-old vehicles undergoing a change of ownership inspection may be out of warranty based on vehicle mileage by the time the inspection is performed. In addition, cost effectiveness has not been calculated but it is presumed to exceed the \$5,300 per ton identified previously in the ARB/BAR Report.

### **Benefits**

Requiring a change of ownership inspection for 3 year and older model year vehicle protects consumers from unscrupulous sellers when they purchase a vehicle. In addition, a significant percentage of vehicles will still be under the manufacturers emissions warranty thereby saving money for both the seller and the purchaser in the event the vehicle fails the inspection.

### **Recommendations**

The IMRC suggests that the Legislature adopt statutory changes to both the Health and Safety Code and the California Vehicle Code that provides for the following:

1. Exempt vehicles 3 years and newer from the change of ownership Smog Check inspection.

## **BAR BUDGET & FUNDING**

### **Summary**

During the monthly meetings of the Inspection and Maintenance Review Committee, several attendees voiced concerns over the BAR budget and what they considered inappropriate transfers of funds to other government entities, loans to the General Fund, and recent statutory changes associated with smog abatement fees. The IMRC has reviewed the BAR budget process and has several recommendations.

## **Issues**

1. Have funds received by BAR been used properly?
2. In recent years, \$114 million has been borrowed from the BAR budget.
3. Pursuant to SB1107 (stats. 2004, chap. 230, §8), a portion of the Smog Abatement fee will fund Carl Moyer Program projects.
4. The IMRC lacks the funding to contract for consulting services.

## **Background**

1. The Bureau of Automotive Repair (BAR) is a specially funded organization that receives no funding from California's General Fund. The revenue sources BAR receives include monies from licensing fees, smog abatement fees collected by the Department of Motor Vehicles (DMV), the sale of Certificates of Compliance, and fines and penalties.

Owners of vehicles four years old and newer pay a \$6.00 Smog Abatement Fee as part of their DMV registration renewal. The Smog Abatement Fee is intended to be used to offset the potential emissions reductions lost as a result of these vehicles being excused from the Smog Check inspection for the first 4 years. Pursuant to Section 44091 of the Health and Safety Code, \$2.00 of the fee is deposited into the High Polluter and Repair or Removal Account while the remaining \$4.00 is deposited in the Vehicle Inspection and Repair Fund. The various licensing, smog abatement, and certificate fees collected amount to over \$120 million annually. The sale of Smog Check Certificates of Compliance generates the majority of BAR's funding. The Legislature annually appropriates the amount of funding based on their review of BAR's projected budget needs.

BAR funding is separated into two accounts: 1) the Vehicle Inspection and Repair Fund; and 2) the High Polluter Repair or Removal Account. The Vehicle Inspection and Repair fund pays for all BAR operations with the exception of the Consumer Assistance Program. The revenue source for the Consumer Assistance Program is generated primarily from \$2.00 of the \$6.00 Smog Abatement fee paid by owners of 4 year and newer model year vehicles which is deposited into the High Polluter Repair or Removal Account. The Consumer Assistance Program derives additional funding from the sale of vehicles impounded by local law enforcement agencies pursuant to §14607.6 of the California Vehicle Code.

During public meetings of the Inspection and Maintenance Review Committee (IMRC), attendees have complained that BAR funds were diverted to agencies other than BAR and for uses other than the Smog Check program. Although the IMRC lacks the resources required to perform a complete fiscal audit of BAR



expenses, a subcommittee was created to review the BAR budgets. Subcommittee members met with BAR staff and budget staff from the Department of Consumer Affairs (DCA) to review appropriations and expenditures. Based on numerous interviews with BAR and DCA staff to review BAR's budget process, the Subcommittee found no evidence to substantiate the allegations. All expenditures and distribution of funds, including funds to cover the overhead charges and indirect expenses of the Department of Consumer Affairs and the State and Consumer Services Agency, appear to be reasonable and appropriate and they appear to comply with state statute and the Department of Finance's policies and guidelines.

2. In the last three years, the Governor and the Legislature have approved borrowing of approximately \$114 million from the Vehicle Inspection and Repair Fund to assist the State offset the General Fund shortfall. In 2002, AB425 (stats. 2002, chap. 379, §2, Item 111-011-0421) transferred \$100 million from the VIRF to the General Fund and requires that the loan be repaid with interest at the rate earned by the Pooled Money Investment Account. Again in 2003, AB1765 (stats. 2003, chap. 157, §2, Item 1111-003-0421) transferred another \$14 million to the General fund with the same interest provisions on repayment.

Section 16320 (b) (1) of the Government Code states, in pertinent part, that "The Director of Finance shall order the repayment of all or a portion of any loan made pursuant to subdivision (a) if he or she determines that either of the following circumstances exists:

(A) The fund or account from which the loan was made has a need for the moneys.

(B) There is no longer a need for the moneys in the fund or account that received the loan."

Section 16320 of the Government Code suggests that the repayment requires a request from the lending agency and the lending agency must identify a specific monetary "need" prior to any loan repayment. However, it does not identify what qualifies as a "need" nor does it address whether expanding an ongoing program such as the Consumer Assistance Program would qualify as a "need".

3. Recent legislation, SB1107 (stats. 2004, chap. 280, §7 & 8), made significant changes to the Smog Check program and diverts some funds that would otherwise be deposited into the Vehicle Inspection and Repair Fund and the High Polluter Repair or Removal Account. These funds now will be deposited into the Air Pollution Control Fund, administered by the Air Resources Board (ARB). Specifically, SB1107 excepted the 5<sup>th</sup> and 6<sup>th</sup> model year vehicles from the biennial Smog Check requirement and imposed a \$12 smog abatement fee on 6 year and

newer model year vehicles effective January 1, 2005. SB1107 requires that \$6 of the fee be deposited into the Air Pollution Control Fund to provide additional funding to the Carl Moyer Memorial Air Quality Standards Attainment Program (Carl Moyer Program) administered by ARB. These additional funds for the Carl Moyer Program will achieve additional NO<sub>x</sub> and particulate matter emission reductions from mobile and stationary diesel sources.

4. Due to budget constraints in the last two years, the IMRC budget was substantially reduced including eliminating resources to employ external expert consultants. This lack of funds resulted in the IMRC's inability to contract for consulting work that would have assisted the committee members in evaluating several aspects of the Smog Check program, particularly in documenting actual emissions reductions generated through the Smog Check program, reviewing BAR expenses, and conducting a more comprehensive consumer awareness/information survey.

### **Proposals**

The IMRC suggests that the Legislature initiate a 5-year repayment schedule of the \$114 million previously borrowed from the Vehicle Inspection and Repair Fund. These funds should be deposited directly into the High Polluter Repair or Removal Account to support the expansion of the low income Consumer Assistance Program. Based on a principal amount of \$114 million, the payment equals approximately \$22.8 million annually plus interest. As previously mentioned, the interest accrued would be equal to that earned by the Pooled Money Investment Account.

The IMRC also recommends that BAR be given the authority to coordinate and assist efforts of the air districts that operate within non-attainment areas in implementing that portion of the Carl Moyer Program aimed at light duty vehicle emission reductions. Although the Carl Moyer Program's primary target remains the heavy-duty diesel fleet, under the provisions of AB923 (stats. 2004, chap. 703, §1), air districts have the authority to provide financial incentives for scrappage and repair of the light duty vehicles. The IMRC believes that BAR's expertise with this portion of the fleet could be productively applied in this program. We suggest legislation be enacted that enables BAR to either coordinate or provide advice to non-attainment areas which choose to use Carl Moyer funds for repairs or scrappage to light duty vehicles. This legislation should allow air districts to opt into BAR's existing programs in order to take advantage of the efficiencies possible using a centralized program. BAR should also be authorized to provide important technical expertise to non-attainment areas that choose to create and operate their own program.

Finally, the IMRC suggests that the IMRC budget be restored to previous levels to provide sufficient funds for expert consultants to enable the Committee to better fulfill its statutory obligation.

### **Concerns**

Some Smog Check station owners object to the loans made from the Vehicle Inspection and Repair Fund to the General Fund. They fear that the money will never be repaid to the Vehicle Inspection and Repair Fund. In part, these funds are generated from licensing and registration fees paid by shop owners and licensed technicians. These funds require repayment only after requested by the lending agency formally requests repayment based on a “need” due to a lack of funds.

### **Benefits**

The suggested five-year repayment schedule provides a long-term repayment timetable to minimize the negative impact that an immediate repayment could have on California’s current General Fund shortfall. Repayment of these funds would assist in the expansion of the low income Consumer Assistance Program.

The aforementioned statutory change should mitigate automotive repair industry concerns that funds from the Smog Check program have been inappropriately diverted. This suggested change improves the ability of the Consumer Assistance Program to expand the cost effective scrappage program and provides additional funding to assist low-income vehicle owners making repairs of older model year vehicles. The Consumer Assistance Program provides an important element in the Smog Check program since older model year vehicles tend to fail Smog Checks at a higher rate than newer model year vehicles. This results in a significant portion of the cost of emission reductions falling on the shoulders of people that can least afford to maintain and repair their vehicles. The additional funding also would be available to BAR’s vehicle scrappage program to remove older vehicles from the California fleet which provides accelerated emission reduction benefits.

Although the various air districts have the authority to develop independent light duty emission repair programs, they lack any enforcement authority over automotive repair shops. If individual air districts create multiple programs, administrative costs increase which reduces the amount of funding available for actual repairs and subsequent emission reductions. BAR currently administers a successful Consumer Assistance Program and could provide assistance to the air district programs.

## **Recommendations**

The Committee recommends that the Legislature adopt a statutory change that provides the following:

1. Initiates a 5-year repayment schedule for the repayment of the \$114 million dollar loan from the Vehicle Inspection and Repair Fund to the General Fund.
2. Calculates the interest earned on the aforementioned loan at the same rate as the Pooled Money Investment Account.
3. Deposits the funds directly into the High Polluter Repair or Removal Account for use by the Consumer Assistance Program.
4. Authorizes the BAR to organize, coordinate, and provide technical support to air districts in non-attainment areas of the state for light duty vehicle scrappage and repair efforts.
5. Provide the IMRC with adequate funds to allow appropriate contracting for outside expertise as required.